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Association of producers of agricultural products

Washington

1920

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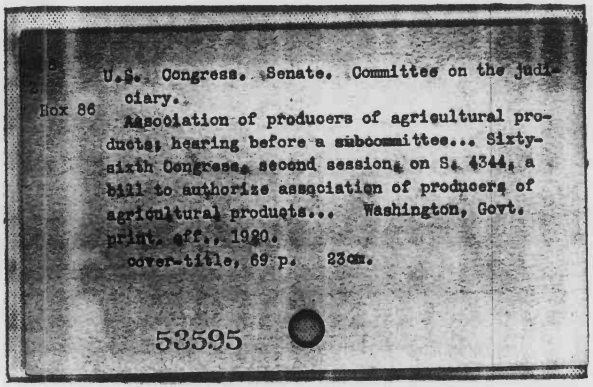
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ASSOCIATION OF PRODUCERS OF AGRICULTURAL PRODUCTS

HEARING

BEFORE A

SUBCOMMITTEE OF THE COMMITTEE ON THE JUDICIARY UNITED STATES SENATE

SIXTY-SIXTH CONGRESS

SECOND SESSION

ON

S. 4344

A BILL TO AUTHORIZE ASSOCIATION OF PRODUCERS OF AGRICULTURAL PRODUCTS

Printed for the use of the Committee on the Judiciary

WASHINGTON
GOVERNMENT PRINTING OFFICE
1920

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ASSOCIATION OF PRODUCERS OF AGRICULTURAL PRODUCTS.

SATURDAY, MAY 22, 1920.

UNITED STATES SENATE,
SUBCOMMITTEE ON THE JUDICIARY,
Washington, D. C.

The subcommittee met, pursuant to call of the chairman, at 10.30 o'clock a. m., in committee room, Capitol, Senator George W. Norris presiding.

Present: Senators Norris (chairman) and Walsh.

Present also, Senator Capper.

There were also present Mr. Benjamin C. Marsh, secretary and director of legislation of the Farmers' National Council and secretary and director of legislation of the All-American Farmer-Labor Cooperative Commission.

Mr. Nat T. Frame, representing the American Farm Bureau Federation.

Mr. Charles A. Lyman, secretary of the National Board of Farm Organizations.

Mr. A. M. Loomis, representing the National Grange.

STATEMENT OF MR. NAT T. FRAME, REPRESENTING THE AMERICAN FARM BUREAU FEDERATION.

Senator NORRIS. Mr. Frame, we understand you desire to be heard first. Whom do you represent?

Mr. FRAME. I am here representing the American Farm Bureau Federation. Mr. Gray Silver is their regular representative.

Senator NORRIS. What is that bureau?

Mr. FRAME. It is a federation of State farm bureaus, representing 35 States, these State federations being made up of the county farm bureaus, the county farm bureaus in practically every case being closely identified with the county agent work.

Senator WALSH. Will you please explain to us, before you pass that, just what the county farm bureau is and how it comes into existence?

Mr. FRAME. There is a little variation in nearly every State; but in general the farm bureaus have grown up either on the basis of individual membership, where the farmers contribute from $1 to $10 on a county-wide basis to form the county farm bureau, or as in my own State of West Virginia the farm bureau is a federation of local community clubs. In the State of Massachusetts the farm bureau is an organization rather definitely recognized in the organic law as a governmental agency.

Senator WALSH. That is, in the law of the State?

Mr. FRAME. In the law of the State; yes.

Senator WALSH. What relation do these farm bureaus bear to the Agricultural Department?

Mr. FRAME. Most of them have contracts under the State extension privilege, which under the Smith-Lever Act represents the Agricultural Department in the States in doing agricultural and home-economics extension work, whereby the farm bureaus become semi-partners of the department in carrying on this educational extension work. While there is no uniformity in the different States, I am giving you the general point of view that is probably more common, although there are States that differ quite radically. But in general the farm bureau secures from its membership fees and from county appropriations local funds toward the salary of the county agricultural agent, and they become in a sense partners therefore in the national extension service.

Senator WALSH. Can you tell us something about the genesis of it? How did it come to be quite so general throughout the United States?

Mr. FRAME. I think the first farm bureau was organized in the State of New York in March, 1913. That first organization was rather a city promoted movement, by the chamber of commerce, to create a farm bureau in the chamber of commerce.

From that the movement spread, particularly to the Northern and Western States, and the farmers themselves pretty rapidly took over the movement, so that the farm bureau became a rather definite term in the minds of the farmers, to describe the local organization that was back of the county agent work.

Senator WALSH. It seems to have been a kind of an organization that sprung up by reason of the Smith-Lever Act or concomitantly with it.

Mr. FRAME. I will say that the Smith-Lever Act certainly gave a good deal of impetus to the farm-bureau movement as such.

Senator WALSH. Proceed, please.

Mr. FRAME. The farm bureaus in their capacity as private organizations, for which purpose they used the money raised by their membership fees to send their delegates to State meetings, and from those State meetings delegates have been selected to the national meeting, of which two have been held in Chicago—one last November and one in March.

At these national meetings, as well as at the various State meetings, and in a very large number of county meetings, the principles of the Capper-Hersman bill, and the Capper-Hersman bill itself has been indorsed, so that it is very clearly the attitude of the American Farm Bureau Federation that legislation of the Capper-Hersman type is needed.

Our organization was very enthusiastically interested in that particular bill. After numerous conferences and much correspondence with the officials of the national organization and of the State federation, and a great many of the counties, Mr. Gray Silver, the Washington representative, gave his indorsement to the so-called substitute bill that we now have before us.

Senator NORRIS. That is S. 4344, as I understand, a bill prepared by Mr. Volstead of the House Judiciary Committee and introduced in the Senate by Senator Capper?

Senator CAPPER. It is the same as the Volstead bill.

Senator NORRIS. That is the bill you want to talk about?

Mr. FRAME. That is the bill our organization is indorsing.

The bill is as follows:

[S. 4344, Sixty-sixth Congress, second session.]

A BILL To authorize association of producers of agricultural products.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That persons engaged in the production of agricultural products as farmers, planters, ranchmen, dairymen, or fruit growers may act together in associations, corporate or otherwise, with or without capital stock, in collectively processing, preparing for market, handling, and marketing in interstate and foreign commerce, such products of their members; and such producers may organize and operate such associations and make the necessary contracts and agreements to effect that purpose, any law to the contrary notwithstanding: *Provided, however*, That such associations are operated for the mutual benefit of the members thereof, as such producers, and conform to one or both of the following requirements:

First. That no member of the association is allowed more than one vote because of the amount of stock or membership capital he may own therein, or,

Second. That the association does not pay dividends on stock or membership capital in excess of 8 per centum per annum.

SEC. 2. That if the Secretary of Agriculture shall have reason to believe that any such association restrains trade or lessens competition to such an extent that the price of any agricultural product is unduly enhanced by reason thereof, he shall serve upon such association a complaint stating his charge in that respect, to which complaint shall be attached or contained therein a notice of hearing, specifying a day and place not less than thirty days after the service thereof, requiring the association to show cause why an order should not be made directing it to cease and desist from so restraining trade or lessening competition in such article. An association so complained of may at the time and place so fixed show cause why such order should not be entered. The evidence given on such a hearing shall be reduced to writing and made a part of the record therein. If upon such hearing the Secretary of Agriculture shall be of the opinion that such association restrains trade or lessens competition to such an extent that the price of any agricultural product is unduly enhanced thereby, he shall issue and cause to be served upon the association an order reciting the facts found by him, directing such association to cease and desist therefrom. If such association fails or neglects for thirty days to obey such order, the Secretary of Agriculture shall file in the district court in which such association has its principal place of business a certified copy of the order and of all the records in the proceeding, together with a petition asking that the order be enforced, and shall give notice to the Attorney General and to said association of such filing. Such district court shall thereupon have jurisdiction to affirm, set aside, or modify said order and may make rules as to pleadings and proceedings to be had in considering such order.

The facts found by the Secretary of Agriculture and recited or set forth in said order shall be prima facie evidence of such facts, but either party may adduce additional evidence. The Department of Justice shall have charge of the enforcement of such order. After the order is so filed in such district court and while pending for review, the district court may issue a temporary writ of injunction forbidding such association from violating such order or any part thereof. The court may upon conclusion of its hearing enforce such order by a permanent injunction or other appropriate remedy. Service of such complaint and of all notices may be made upon such association by service upon any officer or agent thereof engaged in carrying on its business, and such service shall be binding upon such association, the officers, and members thereof.

Senator NORRIS. You may proceed.

Mr. FRAME. In answer to the question as to the likelihood or possibility of farmers' organizations coming to grief on account of their interstate relationship, as has happened in the case of the milk producers' organization in a number of States, it might very readily happen in New England, where the milk producers them-

selves do mostly an interstate business rather than a State business, and the same difficulties might be raised.

Also, the farmers have been very much disturbed by a recent ruling in Tennessee, by Judge McCall, I think, where the statement was made relative to lumbermen that any exchange through a common secretary was a violation of the Sherman Act, and might make them liable.

The farmers in their own lines—when I say farmers I mean the membership of the American Farm Bureau Federation, as we have reports from a great many countries—feel that unless there is definite legislation of this type there is very serious danger of the fourth section being interpreted by some one to cover the corporate activities of the farmers' organization, even as they now exist.

In general I may say that the American Farm Bureau Federation is fundamentally interested in a better marketing system, and it believes that there is a great opportunity for the development of cooperative marketing from the farmers' point of view, and to encourage the development of that system of marketing there is a need of a clear-cut statement, such as is contained in this bill (S. 4344)), that such cooperative marketing is legal, and that the farmers will not get into difficulty when they engage in it.

Senator NORRIS. The question has been raised whether what this bill seeks to make legal is not already legal. What is your idea about that? Of course, if it is already legal, no additional legislation will be necessary.

Mr. FRAME. It is the judgment of a large number of leaders in our organization with whom Mr. Silver has conferred on that point that there is danger of its being interpreted as illegal under the present law.

Senator WALSH. Is that the opinion of lawyers?

Mr. FRAME. Largely farmers, Senator.

Senator WALSH. Has your organization a general counsel?

Mr. FRAME. No, sir.

Senator WALSH. Have you taken the advice of any lawyer of repute who has advised you that there is danger?

Mr. CHARLES A. LYMAN. May I answer that, Mr. Chairman? Mr. John D. Miller is general counsel of the Dairymen's League, and has acted as counsel for the National Board of Farm Organizations in this matter. He and ex-Gov. Deneen, of Chicago, and others representing the farmers have discussed this question and worked on it for several years, and it is my recollection, Mr. Frame, that Mr. Miller was designated by the American Farm Bureau Federation to represent them on this particular matter. I think you will find, Mr. Frame, that that is the case with reference to the Capper-Hersman bill.

Senator WALSH. Where is Mr. Miller?

Mr. LYMAN. Mr. Miller is in New York City now.

Senator NORRIS. Mr. Miller appeared before the subcommittee at the other hearing on the original Capper bill, and made quite an extensive argument. That was before we had this bill (S. 4344) before us, when the original Capper-Hersman bill was up for hearing. Mr. Miller was here at that time and was heard at length.

Mr. FRAME. I am speaking from the point of view of the farmers in the organization, and their judgment and their desire as expressed to Mr Silver on this matter.

Senator NORRIS. I would like to add for the benefit of Senator Walsh that ex-Gov. Deneen was also present and heard.

Senator WALSH. From the statement made by Mr. Lyman I take it that these gentlemen were representing some kind of a dairymen's association, and talking primarily from their point of view. Now, I imagine very likely you do not want us to pass any law that will permit the dairymen around the city of Washington to combine together and fix any price on milk that they see fit, or boost it up to 20 cents a quart. You do not want us to do that?

Mr. FRAME. We are not in favor of anything that will encourage or allow cooperation in restraint of trade. We are interested in a clear-cut definition, such as we believe that this bill gives of cooperative activities that will facilitate and promote trade, and we feel that the present law is so written that it does not make clear, at least to the farmers, just what they can do in the way of cooperation. I am not speaking from a legal point of view, but from the farmer's point of view. That point of view is that there is in the minds of millions of farmers the feeling that they are liable to prosecution under the Sherman Act if they go into these cooperative organizations.

Senator WALSH. Apparently this dairymen's association has been active in this matter, to the extent of having employed eminent counsel looking after their particular interests and not yours. Now, undoubtedly what they want to do is to gather together and make an assocation that can fix and establish prices. I apprehend that the sentiment of the country would be against legislation of that character. Now, if the organization represented by you take your views of the law from that source, I do not believe that they are of a character that you ought to regard very seriously, because we can see at once that the producers of milk supplying a great city have an easy opportunity to establish a monopoly, because milk can not be transported any great distance, and they stand in a little different attitude from the growers of wheat, a commodity which can be sent around the world and which can be kept for 2,000 years.

Mr. FRAME. I think our organization does not at all feel that it is in any way being used to pull chestnuts out of the fire for the dairymen. It rather feels that the dairymen's point of view is fundamentally correct, and that our organizations are indorsing it, because they believe that it is right.

Senator WALSH. But that may be so, and still in order to make anything like a case for legislation we ought to have called to our attention some specific instance of some kind of a farm organization, some kind of a cooperative association, that is in peril of prosecution under the Sherman Antitrust Act.

Senator NORRIS. I think it ought to be said that it was disclosed by the former hearing that the milk producers in no case, I think, dealt with the consumers. Their difficulty arose from the fact that they had to sell their product through their distribution corporation or organization, and that is where they got into their trouble, as I remember. They did not sell directly to the consumer. I do not know whether they expect to do that or not, but their adversary—if you may use that term—in their business was not the consumer, but the distributors' organization; and there is such an organization in all the large cities. There is one here in Washington, I think, and in every other place. The distributors stood between the pro-

ducer and the consumers, and these farmers' organizations were in trouble with this distributing organization.

Senator CAPPER. You have stated it exactly. The situation is just this: In most of these large cities the milk supply of the city is in the hands of two or three highly-capitalized——

Senator NORRIS. And organized——

Senator CAPPER. Highly capitalized and organized corporations that can dictate and do dictate the price that the producer shall receive, and that dictate the price the consumer shall pay, and the milk producer, the dairyman, the farmer, is absolutely helpless.

Senator NORRIS. After listening to all those hearings, Senator, I was very much in doubt as to how to reach the situation. I can see that it needs remedying. The milk supply needs a remedy.

Senator WALSH. I can see how that is a local condition. Here is a city in which there are, we will say 40 different milk-distributing corporations engaged in buying milk from the farmers and delivering it to customers around the city. Those 40 different independent and competing corporations combine and make one so that one organization has now got a monopoly of delivering the milk to the city. Undoubtedly that combination is in violation of the Sherman Act and ought to be and I do not imagine that you gentlemen want any legislation that will authorize a combination of that character.

On the other hand, in my State they have cooperative milk associations of the most commendable character, organized by the farmers. The farmers organize and build a creamery or a cheese factory, and each one owns stock in the creamery or cheese factory, and they sell their own milk to the factory, and the factory buys milk from them, or anywhere it can; but there is nothing about that kind of an association that is in violation of the Sherman Act.

STATEMENT OF MR. BENJAMIN C. MARSH, SECRETARY AND DIRECTOR OF LEGISLATION OF THE FARMERS' NATIONAL COUNCIL AND SECRETARY AND DIRECTOR OF LEGISLATION OF THE ALL-AMERICAN FARMER-LABOR COOPERATIVE COMMISSION.

Mr. MARSH. I know both Senator Norris and Senator Capper know me, but for the record I state that I am secretary and director of legislation of the Farmers' National Council, with headquarters here in the Bliss Building, and also of the All-American Farmer-Labor Cooperative Commission. A number of State federations of labor and of the railway brotherhoods have asked us to appear in favor of the object sought to be attained by the Capper-Volstead bill.

We realize, of course, the danger, or, at least, the possibility of some contingency arising like that referred to by Senator Walsh, but the real purpose of this bill is to be an enabling act. I might say that we have no milk producers' association affiliated with either the Farmers' National Council or with the cooperative commission, and the farmers' cooperative organization want to help both the consumer as well as the producer. We are trying to get direct trading between producer and consumer.

On this milk proposition take Senator Norris's own State. The Nebraska Farmers' Union has established at Omaha a bottling plant. They are handling an enormous amount of milk. They have reduced the price 2½ cents a quart to the consumer, and Mr. Gustafson, president of the Nebraska Farmers' Union and of this All-American Farmer-Labor Cooperative Commission, tells me they have increased the price to the producer of milk from 5 to 8 cents a gallon. So that is a sufficient indication of the real spirit of cooperation.

Senator NORRIS. Right there, on Senator Walsh's suggestion, let me ask you what is there about that which is illegal; and is any law necessary to protect them in doing what you say they have already done, which I know in a general way to be true? What is the reason for legislation to protect them in doing that? That is the point about which Senator Walsh wishes information.

Mr. MARSH. That is an entirely natural question.

Senator WALSH. If you will pardon me, I am in entire sympathy with the principle of this legislation if it is necessary, if there is any occasion for it. I am entirely satisfied that the Sherman Antitrust Act never was intended to apply to combinations of farmers, cooperative in their character, for the purpose of marketing their products, or any other result of that character. I am equally confident that it never was imagined that at the time it was passed that it had application to associations of laboring men for the purpose of securing better wages or better working conditions; and I am also convinced that if there are any evils whatever in either of the organizations of that character, those evils are to be dealt with in a way quite different from the evils dependent upon great aggregations of capital, generally known as the trusts, and that the law applicable to great combinations of capital does not fit these other cases at all. So that if there is anything in the Sherman antitrust law that threatens to imperil cooperative organizations of farmers, even for the purpose of marketing their products, I want to change it. But if there is not, what is the necessity for legislation?

Mr. MARSH. Senator, there is a dormant potential danger which I think you will realize to be this: All these big milk trusts are opposed to these farmers' cooperative organizations which handle milk, taking that as a specific instance. The milling combine is opposed to the farmers' cooperative elevators and milling plants. The packers' combine is opposed to the farmers' independent cooperative packing plants. Now, we have watched those gentlemen, those trust magnates, long enough to know that they are not above nor below the instigating of prosecutions of these farmers' cooperative organizations just the minute that they achieve any degree of success. Whether they succeed in breaking them up or not is not entirely the question.

With that peril—and I think it is a real peril—overhanging the farmers, which they know from their sad experience is imminent and is a big peril, they would like to have an enabling act which states clearly that Congress recognizes just the distinction which you have so well phrased between these vast aggregations organized for profiteering, I think it is fair to state, and organizations of farmers, organized and limited specifically to the mutual benefit of the members. The farmers' cooperative organizations are organized for profit, admittedly, but not for profiteering.

Now, the enactment of this legislation will be a tremendous reassurance to the farmers' cooperative organizations of America, because it puts the stamp of approval—not by going out of its way, as we feel—but puts the stamp of the approval of Congress upon this

effort at cooperative production. Of course, on the other side is cooperative consumption, direct trading, and that is what they want to achieve by this cooperative movement, what the All-American Farmer-Labor Cooperative Organization is working for.

There is no doubt, for it was brought out in the hearings, that just as the big packers have insidiously used every means to put the small packing plants out of existence, they will utilize any machinery of Government, or any quirk in the law, or anything else, to prevent the successful development of these farmers' cooperative organizations.

Senator NORRIS. Then I understand, Mr. Marsh, you feel that even though there is not anything illegal in their carrying on the organizations that they would carry on if they had this law, you ought to have the law as a sort of insurance in advance to prevent any timidity or fear on their part, on the part of those who want to go into these organizations?

Mr. MARSH. Very distinctly so, Senator Norris; particularly as we recognize we are facing famine years in this country. Now, that is not a bluff. We have sent a summary of the figures, sent us at our request by the Secretary of Agriculture, to the chairmen of the Senate and House Committees on Agriculture, showing the probable shortage of wheat and rye and other agricultural products, not only in this country but throughout the world, as well as the shortage of swine, the shortage of cattle, and the shortage of sheep, and it is a pretty black picture.

Now, the farmers have read in the papers the accounts of these prosecutions of farmers, which fell flat in nearly every instance as far as I know, prosecutions by State officials of farmers' organizations; but that was not the point. The farmers were arrested and sent to jail, and the farmers of the country say, "Well, if that is the fate of people in Illinois or Ohio or elsewhere, when they go into these farmers' organizations, we will go mighty slow and watch our step before we go into cooperative production."

Now, the enactment of this bill or a similar bill—the enactment of the principles of this bill—the recognition through a legislative act of the right of farmers to organize to produce and sell their products cooperatively for mutual benefit, safeguarded as this is, safeguarded as no trust is safeguarded, but as the farmers' organizations are safeguarded against profiteering by supervision of the Department of Agriculture—such a law will be a great stimulus to the development of farmers' cooperative organizations, and that is a reassurance that the farmers need. That is our sincere judgment, and I want to emphasize again that there is no milk-producers' association officially connected now with either the Farmers' National Council or the All-American Farmer-Labor Cooperative Commission, and therefore we certainly are not being used by them. Mr. Gustafson and Mr. Baker, president of the Farmers' National Council, who is a leading man in the Michigan Potato Growers' Exchange, were here recently and went over this bill and made one or two suggestions. Dr. J. Weller Long, from Wisconsin, also went over it. All of them felt the necessity for some such legislation.

Senator WALSH. Mr. Marsh, can you give us any specific instance of any kind of a farmers' cooperative association which anybody feels is perhaps in peril under the Sherman Act?

Mr. LYMAN. May I answer that?

Mr. MARSH. May I make a statement, and then I know Mr. Lyman has information on the subject, too.

Senator WALSH. Let us take one specific organization.

Mr. MARSH. The Nebraska Farmers' Union has had a fight to get into the grain exchange.

Senator WALSH. I am entirely familiar with those controversies. The Farmers' Equity is strong all through the Northwest, in Minnesota, North Dakota, and Montana, and it has just exactly that fight. They have organized their own local equity societies and built their own elevators, and thus have established competition, and were not subjected to the losses incident to the situation when there was only one elevator in a town, owned by one of the old-line elevator companies.

They got from out under the operation of the old-line elevator companies, but they then had to ship their wheat to the terminal markets, and the terminal markets were all controlled by the old-line elevators or people associated with them, and they met with all kinds of difficulties about getting elevator space at the terminals. The elevators were full, or they did not care to do business with them, or something of that kind, so that their grain was left on their hands and they had to go to work and build terminal elevators. They then confederated and built terminal elevators at Minneapolis and at Duluth. So I appreciate all you say about those difficulties, because I know that fight has gone on there with great intensity. I saw something the other day, where the Minneapolis Chamber of Commerce refused to do business with any cooperative association at all. So the fight has been intense, and yet nobody in that section—that I ever heard of—even suggested that the Equity ought to be prosecuted as a combination in violation of the Sherman Act.

Mr. MARSH. I am sorry I have not the details here of the action of the court and the fight made by the Minneapolis Chamber of Commerce to prevent the organization of the Farmers' Cooperative out in North Dakota and Minnesota, which was one of the chief causes of the organization of the National Nonpartisan League.

Senator WALSH. That would be very interesting, but did anybody suggest in that connection that the organization was in violation of the Sherman Act?

Mr. MARSH. I can not answer that question yes or no, because I do not remember, but here is the point: There is going to be a fight as to whether America is going to be put, as far as agriculture is concerned, on a cooperative production and marketing basis, or whether these big combinations of capital are going to continue to manipulate the markets and to make more profits every year, even than the farmers' losses. The farmers know they are going to use every legal twist and loophole that they have, and they do not need to prove their case. If they can have a few of these farmers arrested—and you are aware that during the war there has been a good deal of rather unjustified arresting going on in many sections of the country—if they can get them arrested and scared, that is enough for the time being—not permanently, but for the time being; and in asking this law, while admitting that there may not be any peril of conviction, we desire this reassurance.

Senator WALSH. We are all in peril of being arrested on unfounded charges, you know, any day in the week; a man can come in and swear out a warrant against me, swear that I beat up somebody, or that I committed perjury yesterday. That does not change the situation, unless there is some foundation.

Mr. MARSH. It is a matter of the personality of the Federal prosecutor. In certain States it seems to us that the State prosecutors, if they could, as they thought, make a record by jailing some of these men, would do it. Now the Federal prosecutors, looking forward to something further, are subject to the same temptation, unless there is such a definite Federal statute as we here suggest, so that they will know that they are absolutely beyond the scope of the law in attempting to prosecute, although the case might fail, in attempting to proceed against farmers' cooperative associations. Of course we do not want to fill the statute books with needless legislation.

Senator WALSH. I am really looking for light. I am looking for some kind of an association doing business on such lines as that, which some one might reasonably contend fell under the condemnation of the Sherman act.

Mr. MARSH. Take a parallel case——

Senator WALSH. For instance, I spoke about the California Fruit Growers' Association. I have forgotten about the matter now. It did not occur to me at the time that a case could possibly be made against it, and apparently the Department of Justice thought the same way, because they never instituted any prosecution.

Senator NORRIS. I suppose that Mr. Marsh's idea is that the very fact that there was a question about it, or that there was some fear of it, would deter farmers from going into organizations of this kind and getting whatever advantages they would get by that action. They want to get something so plain that there will not be any probability of any such thing being even suggested by anyone.

Mr. MARSH. Precisely, just as there has been legislation to protect building and loan associations. The same principle is involved as the Federal legislation protecting the building and loan associations. There might not be any prosecution of them, but they wanted to be absolutely and clearly within the defined scope and power of the law.

Senator NORRIS. The fact that in the Clayton bill there was a provision that it should not apply to farmers' organizations, and then that exception being limited by saying that the organizations must be organized without capital stock and not for profit—those two things would indicate that if they were organized for profit, or if they did have capital stock, the Sherman Act should apply to them; and, of course, it is practically impossible to get these organizations together and have them formed unless they are permitted to organize for profit and are permitted to have capital stock. They can not be successfully organized without that.

Mr. LYMAN. Mr. Chairman, with reference to the question that Senator Walsh raised in regard to the California Fruit Growers, may I be permitted to say that only within the last two or three years the California Fruit Growers' Exchange changed its plan of organization from one with capital stock to a nonstock, nonprofit organization, in order that it might qualify under that section of the Clayton Act. So apparently it felt that there was danger under the old form of organization. Now, if it felt that it should do so, and did do so, is it not true that many other organizations of similar character may have the same feeling? And it is not practicable to have them change.

Senator WALSH. No; but possibly there was danger that the old form of organization might develop the evil at which the antitrust law was aimed.

Mr. LYMAN. Then, I think the answer to that question is that the danger exists in all cases at the present time where farmers' organizations have capital stock, and that is the thing that we are asking to correct by this legislation.

Senator WALSH. I again find it entirely impossible to appreciate that. Take the ordinary farmers' elevator company. They have got capital stock. The farmers subscribe for the stock. It is provided that no one can own stock except the man who is actually engaged in farming. They have a capital stock of $50,000 or $100,000 and they run an elevator.

Mr. LYMAN. If I may have an opportunity to make a statement on my own account hereafter, I think I can answer or help clear up some of these questions, but I am out of my regular time and will wait until my time comes.

Senator NORRIS. Have you finished, Mr. Frame?

Mr. FRAME. Yes; or I will merely summarize, that the American Farm Bureau Federation feels that there is urgent need for a clear-cut enunciation, such as is provided in this bill, and that cooperative organizations by farmers for the purpose of facilitating trade are entirely legal, and not liable to be attacked by some officer, as has happened in the States where the milkmen have been arrested; and if there were no other reason, the psychological advantage to the production of foodstuffs and the improvement of our marketing problems that will come through the impetus of cooperative activities makes it worth while that a clear-cut statement like this be made, and that is worth the passage of the bill.

Senator NORRIS. It does seem to me that any set of men who are about to organize, when they take the Sherman law and read it, and find that farmers' cooperative organizations are not illegal provided they do not have capital stock and they are not organized for profit—that they would naturally draw the conclusion that if they did have capital stock and if they were organized for profit—they were within the inhibition of the Sherman law, and then they would conclude further that they could not successfully organize without capital stock. Profit, of course, is one of the motives that induces them to go into it, and they would naturally conclude that if they did that they would be violating the law. I think there is a good deal in the psychology of the thing. Another thing: If organizations of farmers with capital stock and organized for profit are not illegal, then why did Congress put into the Clayton Act the provision that if it did not have capital stock and were not organized for profit they should not be illegal? It would almost seem as though, while in tending to do them good, as a matter of fact it has done them harm.

Mr. FRAME. That is a very excellent suggestion, Senator.

Mr. MARSH. I see that Mr. Loomis of the National Grange is here, and I understand he wishes to be heard for a very few minutes.

STATEMENT OF MR. A. M. LOOMIS, REPRESENTING THE NATIONAL GRANGE.

Mr. LOOMIS. Mr. Chairman, if I may have three minutes, I think I can say in that time all that I desire to say.

I am secretary of Prof. T. C. Atkeson, the Washington representative of the National Grange, and I appear here for him and for the National Grange, and in addition to that for the National Dairymen's Union as its secretary.

It is well known to the members of this committee, but for the record I wish to say that the National Grange is a secret fraternity of farmers, their wives and families, organized in 33 States, and with a membership, active and dormant for various reasons, but we believe, thinking as we do, representing fairly a million people.

The National Dairymen's Union is an organization of allied dairy interests.

The only specific piece of legislation indorsed by name by the National Grange at its last session at Grand Rapids, Mich., last November was the Capper-Hersman bill. I think that one statement expresses all that I care to say here at this hearing.

The National Grange considers this matter of such superior importance to the farmer-producer people of the United States that they took up this one piece of legislation as the only piece of legislation which they asked for at the hands of the Congress of the United States by name. I am sure that this indorsement of the Capper-Hersman bill goes also to the Volstead bill, which I understand is the measure that is now before this committee.

The Volstead bill does not go as far as we would like to go, but because of the limitations and provisions of its second paragraph it is an entirely defensive measure, and overcomes some of the objections which superficially might be raised to the Capper-Hersman bill.

I do not believe I have ever heard a clearer statement of the situation upon which the action of the National Grange was based than that which has just been expressed by Senator Norris.

Unless there are some further questions, that is all I care to say.

STATEMENT OF MR. BENJAMIN C. MARSH—Resumed.

Mr. MARSH. Mr. Chairman, I want to say briefly that both the Farmers' National Council and the All-American Farmer-Labor Cooperative Commission would have preferred, in this Capper-Volstead bill, on page 2, beginning with line 3 and going to line 8, instead of having those two alternatives—

> First. That no member of the association is allowed more than one vote because of the amount of stock or membership capital he may own therein, or,
> Second. That the association does not pay dividends on stock or membership capital in excess of 8 per cent per annum—

should have both provisions instead of an alternative, because we feel that that is essential to the complete safeguarding and assurance that that organization shall be on a cooperative basis. We understand, however, that such dual provisions, which are of the essence of real cooperation, would interfere seriously and perhaps fatally, from an administrative viewpoint, with a good many existing farmers' cooperative organizations, and we, therefore, indorse the bill with these alternatives, but we express the hope that those farmer organizations which would not come within the scope of this bill if both these provisions were retained, will reorganize as soon as possible, so that they would come within its scope, with both those provisions in the bill, which may be amended later.

We feel that it is very necessary that this legislation be enacted, and if we can not get all we want the first time, that is not unusual in the history of legislation.

Then the question has been raised as to section 2, and I have not had a chance to discuss with the gentlemen here whether the Secretary of Agriculture or the Federal Trade Commission should have supervision of these farmers' cooperatives. In many ways the Federal Trade Commission would naturally do that. They are already supervising some of the cooperatives; but on the other hand the Bureau of Markets in the Department of Agriculture has now a good deal of information and is exercising some supervision over farmers' cooperative organizations, and it is an open question, which I presume will be discussed by the committee, and perhaps can be raised here, whether the Federal Trade Commission or the Secretary of Agriculture should enforce the provisions of the act. I have not discussed it with Senator Capper, but I understand Mr. Volstead's point was that on account of the relation already established, not in the way of prosecutions or of investigations or complaints, but of current supervision in the Department of Agriculture, that the Secretary of Agriculture had better, for the present, have the enforcement of the provisions of this bill.

Senator WALSH. I want to ask you a few questions about these conditions here. I want to put to you a case such as would fall under the provisions, I imagine, of the Sherman Antitrust Act. In a certain town or city there is a farmers' elevator company, or an Equity Society, being a cooperative association of farmers. They have an elevator. They do not take in all of the farmers of the community, but a considerable number of them. There is, however, another elevator in the town, a competing elevator, and both these elevators are engaged in buying wheat, the farmers' elevator buying from its members, and from anybody else who is willing to sell to it, and the other elevator, owned by an old-line elevator company or by some merchant or other capitalist in the community, also buying wheat from anyone who offers it for sale. Now, the farmers' elevator company buys the independent elevator and puts it out of business. Then the farmers' elevator becomes the sole organization in the community engaged in interstate trade. They are buying wheat and shipping it to the terminal. Now, that association has no capital stock at all. It is purely cooperative, and each members is allowed just one vote. Do you want to have this legislation tolerate a combination of that kind?

Mr. MARSH. I will answer that in two ways: First, that all the antitrust laws which Congress has enacted to date have not been worth, even at the prewar price of paper, the paper on which they were written, when we face the fact of the profiteering that has been going on, and the godless manipulation of prices by the great aggregations of capital, and when we see the Attorney General of the United States stooping to let the packers enter into an agreement—

perpetual unless changed by mutual consent. If you will pardon me for being frank, Senator, in view of this record, to raise the point whether a little farmers' cooperative elevator in a country place is a combination seems to us to be stretching the point, and reading a good deal into the word "combination," which was not intended, particularly as this bill does not give them carte blanche, does not give them permission to go ahead unsupervised. If for any reason the Secretary of Agriculture, under the provisions of this bill, thinks that that combination—using that term as you have designated it—this farmers' cooperative association, would "restrain trade or lessen competition to such an extent that the price of any agricultural product is unduly enhanced by reason thereof," then he could take action.

There has got to be a hearing, and a showing that they are indulging in unfair practices. If so, those unfair practices have got to be stopped. Otherwise it goes to the Department of Justice; and with all deference to the Department of Justice, facing the facts as Americans, we know that a little farmers' concern is not going to be able to fight a case through the courts, assuming that it goes to the Department of Justice, in the way that the big combinations of capital would fight a case. In the light of the decision of the Supreme Court, for instance, on the Steel Corporation, it is hard to conceive how this little farmers' cooperative elevator could be considered anything approximating a monopoly, or even a combination. I would let them try it out. That is our position frankly, that they ought to have the chance, because if they indulge in any unfair practices two courses are open: First, the gentle action, if we may so designate it, of the Secretary of Agriculture, and, second, the power of the Federal Government back of it, through the Department of Justice.

Senator WALSH. You have not touched the point at all.

Mr. MARSH. I am sorry I did not get the purport of it.

Senator WALSH. Do you want this legislation to authorize that kind of thing?

Mr. MARSH. To authorize a farmers' cooperative to do business in an elevator; yes.

Senator NORRIS. No; he means whether you are going to let the farmers' organization buy out the other elevator?

Mr. MARSH. Certainly; provided it remains as a farmers' cooperative.

Senator NORRIS. Suppose by doing that they obtain a monopoly?

Senator WALSH. Suppose they get a monopoly of the business in that town?

Senator NORRIS. Suppose they get a monopoly, and that the farmers who are not members have to patronize them, that they can not go anywhere else, and have to take whatever they will offer them for their product?

Senator WALSH. Let me call your attention to the provision of the second section, which is to the effect that "if any such association restrains trade or lessens competition to such an extent that the price of any agricultural product is unduly enhanced by reason thereof." Now, the effect of the combination that I speak of would not be to enhance the price, but would be to reduce the price.

Mr. MARSH. Yes.

Senator WALSH. So it would not fall under the provisions of section 2.

Mr. MARSH. But it restrains trade or lessens competition.

Senator WALSH. But it comes under the jurisdiction of the Secretary only, if by so restraining or lessening trade the price of the product is enhanced.

Mr. MARSH. All right, take that up. What would be the purpose of lessening the price paid for grain? Why are corners formed on grain? They are formed for the purpose of enhancing the price. It seems to me this section absolutely covers the conditions of the theoretical proposition that you have made.

Senator WALSH. You do not follow me at all.

Mr. MARSH. I think I do, Senator. I do not think you agree with my answer, but I think I follow what you are driving at.

Senator WALSH. You do not enhance the price at all. When the monopoly is established in the community, and the community has no other market, the result, of course, will be to reduce the price to the farmers in that locality who do not participate in the organization, who are not members of the association. Now, your idea is that the statute provides that they do not fall under the jurisdiction of the Secretary unless the price is unduly enhanced. Now, they would have to have a monopoly, not at the point of the primary market, but they would have to have a monopoly at the terminal market in order to enhance the price. They have not that monopoly. The same quantity of grain goes to the terminal market as went when the two elevators were operating, so that the price at the terminal market is not enhanced at all, but the price at the primary market may be reduced, because competition is destroyed.

Mr. MARSH. I am not a lawyer, but it would seem to me——

Senator WALSH. Of course, you have said that you do not intend, and I know that you do not intend to authorize anything of the kind——

Mr. MARSH. I see no objection——

Senator WALSH. To having the farmers' elevator absorb every competing elevator in the town?

Senator NORRIS. It seems to me you must remember that Senator Walsh bases his question on the assumption that there remains only one elevator in the community, which is owned by the farmers who are in the association. Now, the farmers who are not in the association have got no other market, and they will have to take a price for their grain which is probably much less than it is worth, will they not?

Mr. MARSH. My point was——

Senator WALSH. Before you pass that let me suppose that the association has a limited membership, and that might be entirely proper. They might organize a farmers' association, the membership to be limited to 100. Then that association gathers in the competing elevator in the town, and the farmers who are outside of the association have only one monopolistic market in which to market their grain. Now, of course, you do not intend to authorize——

Mr. MARSH. We do not want to confer immunity upon any farmers' cooperative association to do what would be illegal if done by a big combination of capital. Frankly, I do not get your point.

But it does seem to us, first, that that is most dangerous, and second, that the purpose of such action as you speak of would be clearly an attempt to achieve an enhancement of the price which the farmers' cooperative could get for the wheat it has or the grain it has in its elevators, and therefore it does bring it within the scope of section 2. That is our contention; because, what other purpose would they have?

Senator WALSH. Their purpose would be not to enhance the price, but to lower the price?

Mr. MARSH. It would be to lower the price which they pay for grain, in order that they might get a higher price.

Senator WALSH. No; it does not affect their selling price at all. They sell at the terminal market.

Senator NORRIS. They want to make more profit.

Mr. MARSH. They want to make more profit.

Senator WALSH. Of course, if the competitors at the terminal market were materially affected, your argument would be sound. If the terminal market had only this one source of supply, they could then hold their grain for any price they saw fit. But of course this primary market has competitors all over the territory, the product of which goes to the terminal market, and the amount of competition at the terminal market is not materially affected because of the absorption of one elevator in a small town.

Mr. MARSH. No; it would only be a tendency. So far as I am concerned—I can not speak for the other organizations—if there is a defect in the drafting of the bill, I would be perfectly willing to see it amended so that it would read—I do not think it is necessary, but——

Senator NORRIS. Let me suggest, there: Suppose the bill were amended in line 12, on page 2, so as to add the words "or reduced" right after the word "enhanced."

Mr. MARSH. That is the suggestion that I was just going to make, Mr. Norris. I do not know what line Mr. Lyman and Mr. Frame would take.

Senator NORRIS. It seems to me that Senator Walsh has presented a case there that might very well happen. But, Senator, do you not think that would meet it; if, after the word "enhanced" we should add "or reduced"? So that it would read:

> SEC. 2. That if the Secretary of Agriculture shall have reason to believe that any such association restrains trade or lessens competition to such an extent that the price of any agricultural product is unduly enhanced or reduced by reason thereof, etc.

Senator WALSH. Well, Senator, that, of course, would improve it; but I would not like to authorize that kind of a transaction at all. In the first place, you know, the farmers out marketing at some small town in the State of Nebraska, or in Montana, would not really have very much redress if they had to make a petition to the Secretary of Agriculture and demonstrate to him that, though their competitive market had been destroyed, yet the fact was that the evils of the destruction of competition had been established, and that that——

Senator NORRIS. If these elevators were owned by two private persons, there is nothing in the law to prevent one from buying another.

Senator WALSH. No.

Senator NORRIS. We ought not to restrain a farmers' organization from doing something that anybody else could do.

Senator WALSH. Yes; but under certain circumstances and conditions, the purchase of one of the competitive businesses by the other would be in violation of the law, and it seems to me that if the farmers' association thus establishes a monopoly such as would fall under the condemnation of the Sherman Act it ought to be amenable in exactly the same way as if it was a private individual.

Mr. FRAME. Senator Walsh, does it not alreay provide if that monopoly shall happen, it shall be a cooperative monopoly; that the organization shall handle the goods of the members, the products of its members, and not do an outside business? Otherwise it would extend the cooperative feature to all the farmers that shipped to it, and it would not be handling the products of its members, and would not come under the law.

Senator WALSH. But my idea is that you do not want to restrict these organizations to dealing with their own members only.

Senator Norris calls attention to the farmers' union of his own State that does business for its members and for anyone else. I have in mind the National Warehouse Co., with which I am quite familiar. That is a cooperative association. The stock is all owned by growers of wool, men who are engaged in producing wool, in the States of Montana, Idaho, Wyoming, and other Western States; and each member ships his wool to this company for sale and disposition; or, if he does not, he pays the commission just exactly the same as if he did ship. But they will take wool from anybody else and sell it on commission in exactly the same way; and, I understand, you want to give these farmers' institutions the same opportunity, and I think that is wise.

Mr. FRAME. My question was in regard to that phraseology in line 8, on page 1.

Senator NORRIS. I was going to ask you, do you not think that the words "of their members" ought to be stricken out? It looks to me as if this bill does not permit them to do business for others.

Senator WALSH. Senator, if you will pardon me, I do not think so. I think they are all engaged in marketing the products of their members, but they are doing something besides that.

Senator NORRIS. We ought to say something about that. They ought to be allowed to handle other people's products as well as those of their members. Am I right in saying that the farmers' union does that, Mr. Marsh? They will handle anybody's wheat, will they not?

Mr. MARSH. Yes; they will. Would not the next clause permit that?

> And such producers may organize and operate such associations and make the necessary contracts and agreements to effect that purpose.

Would that refer back only to the members? We did not so construe it; and if so, and it would confine it to the members, it is too limited in its application.

Senator NORRIS. It would rather seem to me as if they were confined to operation for their own members, as the bill is drawn. Let us take the case where there would be one elevator in some small place, and assume, for the purposes of the question, that it would

be uneconomical to have more than one elevator; that there is business enough for one but not enough for two, and there are two elevators there.

Senator WALSH. And they are in first.

Senator NORRIS. And they are in first. Another man comes along and he raises wheat. What is he going to do? If this farmers' organization can not buy his grain, he is there without a market.

Senator WALSH. Yes; and on the other hand they might get a carload or a trainload of coal, when they have not enough members to take the entire carload, and they could dispose of a half or a quarter of the carload to some one else.

Senator NORRIS. Yes; and if they were not allowed to do it, the people would freeze; they would not be allowed to sell to them.

Mr. MARSH. If that is the construction, I would say that those three words should be stricken out.

Senator NORRIS. You gentlemen have no doubt in your minds but what these farmers' organizations ought to be allowed to deal with anybody, have you?

Mr. LYMAN. The answer I would make to that is that in the South and West, and I guess in other directions, you will find that the State cooperative laws require that the nonmembers shall receive one-half the patronage dividend that the members receive, and that they may receive it in one or more shares of stock. That is the way we have got it in Wisconsin, and I think it is true also in Iowa and Minnesota and, I think, other States; so that while we do business with nonmembers, it is the effort to bring them into the association and make the association larger and stronger all the time, and in that way it works out well.

Senator NORRIS. Of course, you are assuming that you have that sort of a State law, and we ought to pass a law where that does not exist; but I think it does nearly everywhere.

Senator WALSH. There is an added reason why they should be permitted to deal with outsiders.

Mr. LYMAN. I think that is true, and my feeling has been all the time that the associations organized for mutual help should not be excluded from doing these things.

Senator WALSH. This discussion has served to elucidate the point that I have been endeavoring to call your attention to all along. My idea about the matter is that nobody has yet made a case that would bring any of these organizations under the ban of the Sherman anti-trust law, but that your legislation as it is now drafted may permit combinations that may be monopolistic in character, that you do not want to authorize at all.

Mr. MARSH. Well, now, taking up your point as to the two suggestions, we are perfectly agreeable to having those three words, in line 8, on page 1, "of their members," stricken out.

Mr. LYMAN. That would throw the door wide open.

Mr. FRAME. I do not think that ought to be done.

Mr. MARSH. Let me finish. There has got to be a provision, if you do take that out, that would apply only to States where such a situation is not covered by the State law, and I do not believe you can put that in a Federal bill, can you? I am not a lawyer. That is why I put it up to you two gentlemen, who are lawyers.

Senator WALSH. I did not get that.

Mr. MARSH. Could you provide, if we struck out the words "and their members," so that it should apply only to States where existing laws do not cover the situation?

Senator WALSH. You could do that, but I do not see any purpose in it.

Senator NORRIS. Mr. Lyman, you say that would not do; that it would result in combinations and monopoly if we took those words out. I wish you would explain that. It may be that that is true, but I can not see why the striking out of those three words would not remedy the situation.

Mr. LYMAN. For one reason, Senator, suppose that Armour and Cudahy and Swift had each a farm. Most of them pride themselves these days on calling themselves farmers because they own a farm. They could get in, under that provision, as I see it, if they were persons engaged in the production of agricultural products.

Senator NORRIS. How would they come under it?

Mr. LYMAN. If you struck out the provisions as to handling products "of their members," they could get in as persons engaged in agricultural production.

Senator NORRIS. What is the objection to that? Let them do it.

Mr. LYMAN. They would not handle their own products only, but all the products they could get hold of, just as they are doing at the present time, and that is one of the things we have tried to guard so carefully against in drafting this whole legislation, so that it would be the bona fide producers handling the products that they were producing.

Senator NORRIS. Just how are you going to meet the proposition of some fellow that is not a member of the organization——

Mr. LYMAN. I am not willing to admit now, Senator—I may change my mind later—that these organizations can handle products in addition to their own products.

Senator NORRIS. Then, from your own argument, why are not the packers in it? Why is not that a danger now?

Senator WALSH. I think the answer is that they may do anything incidentally.

Mr. LYMAN. That is my construction at the present time.

I do not think they would come under the protection of this bill if they bought somebody's else wheat. The law would not help them. The law would say, "You are dealing with somebody else, and the law does not provide for that."

Mr. MARSH. If you had a provision in page 2 limiting members to one vote——

Senator NORRIS. I do not think there is any danger of the packers getting in and controlling this. If Armour is the owner of a farm, I want him to have the same privilege as anyone else. They can take him in or they can leave him out, but if he raises some wheat and he is out, why not let him sell to them, if they want to buy his wheat and he wants to sell to them?

Mr. LYMAN. I was not referring only to the fact that he might not have a right to market the products he raised on his own farm, but I was thinking of a loophole of that kind for these people out in California and other parts of the country to get in under the guise of

being producers themselves, and then allowing them to handle the products of everybody else. That is just what they are doing at the present time, and that is why we hope there will be satisfactory legislation.

Senator NORRIS. One of these corporations would not have but one vote when he got in.

Mr. LYMAN. Yes; but suppose he is associated with half a dozen others of this kind who own farms. Most of the packers have farms out near Chicago. This association of half a dozen packers who would qualify under the first part of this paragraph, who are engaged in the production of agricultural products, could then go ahead and handle the products of the whole world.

Senator NORRIS. How would they? They would not produce it there.

Mr. LYMAN. But I understand you want to have it phrased so that any person who is engaged in the production of these various products can form an association and handle other products; and then, in addition, you want it so that they can handle the products of anybody else they want to buy from. There is where I see the danger.

Senator NORRIS. I would be perfectly willing to limit it so that they can not go out and buy in other places or something of that kind; but we do not want to pass any legislation that will take away the local market for any individual. That is the danger I am afraid of, if we leave it as it is. In other words, there may be some farmer who does not want to join the organization. Now, I do not want to compel him to.

Senator WALSH. There are others whom they will not admit to the organization.

Senator NORRIS. That is true; there may be some farmers there that you would not admit to the organization if they wanted to go in. Now, take such a man. He raises some wheat. He might have to haul it 40 miles to some other place. You have really destroyed his local market, unless you will permit this cooperative organization to buy his products.

Mr. LYMAN. That is so contrary to the history of the cooperative movement. I think you realize that the whole tendency is the other way; that the discrimination comes from the old-line elevators.

Senator NORRIS. I know it is; and that is the reason I think you people ought not to ask for it. In every other place we know about, they have not done anything of the kind; and here we are going to pass a law that I am afraid will compel you to; that will say, "Here is a local farmers' organization out here in Kansas and they will not be allowed to buy the wheat that is raised within sight of the elevator unless the man who raises it is a member of the organization."

Mr. LYMAN. If that condition existed, and they forced prices down, then under the laws of supply and demand, and competition, what is to prevent the corporation from going in there, if prices are forced down? In the first place, those elevator companies are already there. They preempted the field, and did force prices down, did have the monopoly, and that is the reason why the farmers' union and the farmers' equity are building up these organizations.

Senator NORRIS. I understand that.

Mr. LYMAN. You understand all that.

Senator NORRIS. Yes.

Mr. LYMAN. Then what is to prevent the corporation from staying there and fighting this thing out?

Senator NORRIS. Nothing in the world.

Mr. LYMAN. Yes; and is it not true that they will do it?

Senator NORRIS. In most places they will; but the country is developing. You build a new line of road, and here is a farmers' organization; or a new town, and they build an elevator there; and they are perfectly willing—and I am not accusing any organization of trying to do anything that is wrong; they want to do what is right—they want to buy all the grain that is produced around there; and we pass a law which says, "You shall not do it; if you do it then you do not come under this law." That is the thing I am talking about. I am not talking about desiring to monopolize, or raising the price or lowering the price, but supposing you are all perfectly honest, the law under which you are to operate will not permit you to buy anything but the products of your own members. I do not think that is right.

Mr. LYMAN. Do you not think that the proviso that the association shall not pay dividends on stock or membership capital in excess of 8 per cent per annum——

Senator NORRIS. That has nothing to do with it. You are going on the theory that I am looking for an organization that is going to do something wrong. I am not. They do not want to pay more than 8 per cent. There is no dispute between them and the man wro raises the wheat, but he is not a member of the organization, and the law says they can not deal with him.

Mr. LYMAN. Does the law say that?

Senator NORRIS. I rather think it does.

Mr. FRAME. You have to conform to the Sherman law in such cases.

Senator NORRIS. The bill says that these associations are organized for the purpose of dealing in the "products of their members."

Mr. FRAME. To explain my interpretation, as I read that, as to whether it is a desirable thing or not: We had in our town a fruit exchange. Our interpretation was that so long as that fruit exchange handled the products of its members it came under the provisions of this bill.

Senator NORRIS. And they could handle others, too.

Mr. FRAME. But if they handled the products of others they would then have to conform to the Sherman law, and if they did make any violation they would be subject to the provisions in the Sherman law. Of course, as Senator Walsh has suggested, that has not been very stringent up to the present time, but they would still be under the control of that ruling, because they would be dealing in products other than those of their members.

Senator NORRIS. Here we are going to pass a law for the purpose of protecting these associations of producers and we outline what they must do. Now, you can form another organization of producers where they make no claim to coming under this law, but they will not be accorded any of the benefits and they will be subject

to prosecutions under the Sherman antitrust law; so that you are not coming under this law at all. You could do that now if you wanted to. But the object of this law is to protect this organization you have, to comply with the law in order to get the protection. If you violate the law and deal outside of the membership, you are not under the law and you are not entitled to its protection.

Mr. MARSH. May I ask, Mr. Chairman and gentlemen of the committee, whether the bill as it now reads does not meet just the point we have raised? If, as provided in line 8, this bill is to apply only to organization which handle exclusively, solely, the products of their own members, then there is no danger of their attempting to reduce the price paid to their own members?

Senator NORRIS. No.

Mr. MARSH. Because that would be contrary to the purpose.

Senator NORRIS. No.

Mr. MARSH. Therefore, if this bill stands, what it means is this, if I construe it correctly: It is going to protect the public against such limited farmers' cooperative organizations attempting to exploit them, if these organizations confine their dealings exclusively to their own members—to the products of their own members.

Senator NORRIS. Then the objection in line 12, page 2, does not exist.

Mr. MARSH. It does not exist.

Senator NORRIS. I concede that.

Mr. MARSH. Of course, the result of that will be to get them to increase their membership as rapidly as possible.

Senator NORRIS. That is what the cooperative movement is trying to do, to bring in all the farmers, so that, instead of getting money on the capital invested, they can get the money on their products raised.

Mr. MARSH. Now, as to the point Senator Walsh raised, supposing 50 per cent of the farmers in this community buy the competing elevator and 50 per cent of them are outside. That farmers' elevator, the cooperative organization, later would not want to buy an extra elevator unless it had business to handle in that elevator, would it? It would be money wasted.

Senator NORRIS. Not necessarily. Of course, the monopolist does that in regard to a business in order to control the situation.

Mr. MARSH. Yes, he might; but the instinct of monopoly is not so firmly implanted in the farmers that it is a menace now.

Senator NORRIS. No.

Mr. MARSH. No; we agree with that. It is only a question of whether it is statesmanship to enact a bill for conditions that may arise, if I understand you. Now, it seems to me if the bill is passed as it stands that there is very little danger of any such occasion arising as Senator Walsh has suggested the possibility of. It exists. But those outside elevators and the old-line elevator have an ample field if the organization is limited to the handling the products of their members.

Senator WALSH. But you can put this on a very much larger scale. Let us presume that the Equity Society is managed, as it is, with very excellent business ability, and they, of course, are popular. The farmers generally belong to them, and they conduct their opposition to the old-line elevators with such vigor and success that the old-line elevator says, "We will sell out our line to you"; and they do it. They not only buy one elevator but they buy every elevator, but every one of the great big old-line elevators, and destroy competition in 40 towns.

Mr. MARSH. Yes; that is a possibility.

Senator WALSH. That is a possibility. I do not speak of it, you know, as a thing that is likely; but do we want to pass legislation that will authorize that kind of thing?

Mr. MARSH. I can only repeat that it does seem to me that a court would construe that the purpose of such action as you suggest, establishing monopoly in 40 or 50 towns, whatever it may be, the purpose would be to secure an increase in the price of that agricultural product, and therefore that such action would be subject to investigation by the Secretary of Agriculture, and he would have the right to order it stopped; and, of course, it is different in a country community. There is more spirit of neighborliness, is there not?

Senator WALSH. Yes; but the trouble with all that is that you have then to enter into an inquiry as to whether that particular absorption has unduly enhanced the price. We will consider that it is perfectly well established that it has reduced the price in all of the monopolistic centers where there is no longer any competition. They do not pay the price to outsiders that the outsiders ought to have; but still, when you come to the enormous quantity of grain that comes into the terminal point, why you are obliged to admit that the price has not been enhanced; that is to say, that they do not make their profit by getting an enhanced price for what they sell, but they make their profit by buying at a less price than they otherwise would have been obliged to pay, so that it does not fall under the provisions of that section.

Mr. LYMAN. Senator, if they buy at a lower price, they pay a higher dividend.

Senator NORRIS. Yes.

Mr. LYMAN. That is the way that takes care of itself.

Senator NORRIS. But the thing you will admit there, I think, Mr. Lyman, is that they may buy of the fellow that is not a member. He gets no patronage dividend, and he loses right away by being compelled to sell at a lower price.

Mr. LYMAN. That is the reason for that second proviso, so that they can not pay more than 8 per cent on their capital stock.

Senator WALSH. I want to call your attention to that. That applies only in case they pay dividends; but they can accumulate a certain amount of surplus.

Mr. LYMAN. The law allows them to accumulate surplus in certain States.

Senator WALSH. Yes.

Senator NORRIS. But they do not have to have the 8 per cent dividend proposition in there at all, if they have the other one—that no member of the association shall be allowed to have more than one vote. They can pay 100 per cent dividends, if they like, then.

Mr. LYMAN. The State law, Senator——

Senator NORRIS. There, again, we come to State laws. There might be none, and they would control it absolutely.

Senator WALSH. I am quite sure there is no restriction in my State. Any corporation can make anything. But what I want to submit to you is this: I am in entire accord with you, but it occurs to me that this legislation has not been reflectively drawn. When you come to deal with the Sherman Act, you have to deal with a very delicate statute, that is 30 years old and that has given rise to endless legislation, as you know; and when you come to frame a law that is going to affect that you ought to have some lawyer who is thoroughly familiar with the whole history of that legislation and with the decisions that are made under it, and who has a very clear idea of just exactly what the evil is from which you are likely to suffer, and to draw your legislation so that that evil may be met, and who will at the same time anticipate all of these complications that we have now suggested to you.

I have run over the testimony of Mr. Miller in this record. Why, he does not talk about these things at all. There is nothing here on them.

I have gone over Gov. Deneen's testimony, also.

Here is Mr. Miller's testimony, for instance, a couple of pages, and there is not one of these things that he has mentioned.

Senator NORRIS. As I look at it I might, on further investigation, find something else, but it seems to me that this bill might very well be passed with one or two slight changes.

Mr. LYMAN. Mr. Chairman, I have not had an opportunity to make a statement here to-day. I hope I could help to clear up some of these thoughts that have been suggested by Senator Walsh if I could make a statement of why to do that, having that thought in mind, because I have been a farmer all my life, Senator, and I come from Wisconsin, where we have a good deal of cooperative activity.

Senator WALSH. A good bit of it.

Mr. LYMAN. And I feel that possibly I could help to clear some of these questions if I may have an opportunity at some time.

Senator NORRIS. Do you want to make a statement?

Mr. LYMAN. Yes, sir.

Senator NORRIS. Well, we will let you make it now.

STATEMENT OF MR. CHARLES A. LYMAN—Resumed.

Mr. LYMAN. With reference to the question raised by Senator Walsh as to whether the first section of the bill should stand and as to whether it would limit the farmers to handling only their own products—the products which they themselves produce—I take it that it is his understanding that they could engage in handling the products of other farmers in their communities.

The chairman feels, however, that there is danger that this would be construed to mean that they could only handle the products which they themselves produce, and with that in mind, I think that a way to remedy the situation would be to insert the word "primarily," after the word "engaged" in line 3, on page 1, of the bill, so that it would read, "that persons engaged primarily in the production of agricultural products," etc. I would much prefer that change to the suggested change that you strike out the clause "such products of their members," in line 8, on page 1.

Senator NORRIS. If you put that word "primarily" in there after the word "engaged," in line 3, it applies only to the business of the men who are going into it, what it is they are engaged in, and not to the business that they can do as an organization. I do not think that would help it at all.

Mr. LYMAN. Well, just let that be stricken out of the record, then—that particular part.

My suggestion would be that the section be drafted in such a way as to throw the emphasis on the activities of the farmers themselves in marketing their own products. If that can be done by inserting the word "primarily," it may clear up the point raised by the Senators.

Senator Walsh raised a question with reference to the milk producers. I think the Senator confused the term "dairyman" with the term "milk distributor." Our board has affiliated with it the National Milk Producers' Federation, which comprises the milk-marketing associations of the large cities, and those associations are associations of farmers—of the milk producers themselves—and I must say that there are tens of thousands of these milk producers belonging to the Grange and to the American Farm Dairy Federation, and many other organizations. They overlap with the farmers everywhere, and these dairymen are farmers: and I do not believe that the Senator intends to convey the idea that as farmers and as producers of milk they should not have the right to organize in order to be on a better footing with the milk distributors of the cities, who are setting the prices which the consumer pays.

A study of milk prices which the farmers have been getting through the past few years, particularly during the war period and up to the present time, shows that in all cases the farmers are producing at a very reasonable price, and in the case of the Dairyman's League of New York it can be shown that for many months in the year they are actually producing at a loss.

Now, in asking prices for milk through their cooperative association they are for the most part basing their prices on a study of the cost of production, and they are using formulas which have been worked out by the agricultural colleges, which show the percentage of grain and hay and other feeds that go into the making of 100 pounds of milk and the percentage of labor cost, and then they take this formula and work out the cost of production of their milk. They take the price which they pay locally for their feed, or the price at which they could sell their feed and their hay, and the price which they have to pay for their labor, and in that way they figure out what the cost of production is; and then they have been comparing these costs of production, and through their managements have been asking prices and trying to get prices—they are not always getting them, because they are often denied by their distributors, but they are trying to get prices for their milk—which will keep the business of dairying going and alive so that they can produce milk for the city people: and I think the Senator will agree that my statement is correct that that is commendable and that they ought to have the right to market.

The fact remains, however, that during the last few years a hue and cry has been raised against the farmers. It is not so much by

the consumers themselves as it is, oftentimes, by some district attorney, somebody who wants to make a record as prosecuting attorney, and who will pose as the city people's friend. There is a psychology about milk, because it is the baby's food, and in some cases district attorneys have done nothing more nor less than make a grandstand play, and they have inflamed the minds of consumers against the farmers when as a matter of fact what they should have been doing was to hold investigations of the distributors, and try to bring about some way either on the part of the consumers or on the part of the municipalities or on the part of the farmers, to work out a marketing company—a cooperative marketing company—which would eliminate overlapping of delivery, and the hundred and one causes of higher prices of distribution.

Senator Walsh asked Mr. Miller whether there was any case where these producers' associations had come in conflict with the Federal antitrust law. I noticed in the Senate hearing, Senator——

Senator WALSH. Before you pass from that, you were talking about the milk question. I would like to direct your attention to that subject for a moment. Ordinarily the farmers who actually produce the milk do not distribute it themselves; they sell it to a distributor; and you have called attention to the difference between the producer and the distributor; while the distributors—if there should be more than one in city—quite frequently get into what is known as a gentlemen's agreement, and they pay the farmers a very inadequate price for their product; and the farmers, as you are endeavoring to cultivate a disposition, conclude that they will organize a distributing association of their own; and so they associate themselves together and make a good, strong body of producers of milk, and they establish a producers' distributing agency, cooperative in character, in the cities; and they all deliver their milk there and they distribute it in that way.

Now, that is a highly commendable association, and it should be encouraged in every way, and if there is anything whatever in Federal antitrust law that would prevent them from doing it, I want to amend that law so that they shall be permitted to do it.

But we will assume that this farmers' cooperative association of milk producers is highly successful; so much so that it weakens the competition of the independent fellows; and, catching the trust spirit, they enter into a combination by which they gather into their association every other distributor of milk in the city. After that they have a monopoly of it. Now, you do not want any legislation—I am sure you do not—that will authorize that kind of a combination.

Mr. LYMAN. Senator, I would answer that by saying that section 2 would absolutely take care of that.

Senator WALSH. How would section 2 take care of it?

Mr. LYMAN. The procedure—the machinery—is laid down—of the Secretary of Agriculture—if he has reason to believe that there is such an association to restrict trade.

Senator WALSH. Such a combination would be a monopoly.

Mr. LYMAN. It ends up in an injunction by a court.

Senator WALSH. Yes; but let me ask you, Why should a monopoly of that character be tolerated any more than any other kind of a monopoly? Why should you condemn a monopoly, we will say, of the production of cookstoves in a community? Why should you say that if the dealers in hardware in a city should all combine and the whole thing be thrown into one combination that shall be unlawful, but if the competitors in marketing milk associate themselves together it shall not be unlawful?

Mr. LYMAN. My answer, Senator, is that the Supreme Court of the United States has now declared that there are good trusts and bad trusts, and that the whole history of the cooperative movement is this, not to raise the difficulty you anticipate in the main.

Senator WALSH. That is no answer at all.

Mr. LYMAN. We could raise these objections as to what people might say, but when the whole tendency is the other way, and when wealth is being concentrated in the hands of a few, and when it seems that there was to come on an era of antisocial legislation at the present time rather than legislation which is looking to curb monopolies and trusts, it seems to me that we should take steps which will encourage and permit the producers of the country to be in a stronger position so that they can stay in the industry.

It has been pointed out this morning by several speakers that the situation is very serious. This situation has been going on and getting worse for the last few years.

This measure is what the farmers throughout the country, from coast to coast, feel is necessary to encourage them. There is a fear at the present time that they are going to have their offices raided, that their officers are going to be put in jail—and their officers have been put in jail—for the most part, as we know, under State laws—that is true, Senator—but the fact remains that there has been encouragement given to that by Federal officers; and if you will turn to page 9——

Senator WALSH. Yes; but you must remember that is all beside the question that I have put to you and the question I am directing your attention to. That is a general discussion of the whole subject. You could easily conceive—you know you could easily conceive—that the farmers' cooperative organization should establish its distributive agency and there would be only one other distributive agency in the city, just like the farmers' elevator; there is only one other distributing agency in the city, and they enter into a combination by which they affect that competing distributive agency. Now, not everyone around the country is in the original organization, and the other producers of milk are obliged to sell their product to this monopolistic organization, cooperative in character. It is exactly the same thing I told you before.

The point I am trying to make to you is that you are likely, by what you propose, unless you carefully safeguard it, to precipitate just exactly the evil that you are seeking to remedy. In other words, you are likely to take away from your people the market that they have, by authorizing combinations which will result in a monopoly in certain localities.

Mr. LYMAN. Well, Senator, do you not think that the safeguards of section 2 will take care of it?

Senator WALSH. No; I do not.

Mr. LYMAN. Why will that not take care of that? I can not understand your thought there.

Senator WALSH. I will tell you why it will not take care. I will try to make that perfectly clear to you. We will say it is the city of Helena, in which I live.

Mr. LYMAN. Yes.

Senator WALSH. There is no cooperative organization there. They each distribute their own milk. But we will suppose, now, that they do organize a cooperative association of some of the producers of milk, but not all, and that cooperative association takes over the distribution of milk in the city. It does not include all of the milk producers.

Now, those milk producers who are outside are obliged to sell to the distributing agency. They have no distributing facilities of their own, at all. They are obliged to sell to the cooperative association, which has absorbed several rival distributing agencies, to which they theretofore sold their milk.

Now, we put the word "reduce" in there. Of course, in the present situation, as the bill is now framed, the situation would not be taken care of at all.

But let us put "reduce" in here. Then what is the situation? Then some fellow that has half a dozen cows down in the Prickly Pear Valley has got to make an application to the Secretary of Agriculture, and he has got to go through a lawsuit of no mean consequence to determine whether that organization is paying him enough for his milk or not; and when he gets an adjudication finally, after the thing goes through the circuit court of appeals, he gets an adjudication to the effect that they are not paying him enough, and they have got to pay him more. Very good. Time goes on; two or three years go on, and things change. Prices have been rising, and they rise again, and they reduce the price of milk again and again. Now, what has he got to do? In other words, you are endeavoring to preserve the farmer from the peril he is in of prosecution, but you are putting it in this shape, so that the only remedy you offer him is by coming up here to the Secretary of Agriculture and then going through a regular course in the courts to get protection.

Mr. LYMAN. May I ask you whether you think that danger is so real as to prevent the reporting out of this bill? Do you think that is a real danger, and should it prevent consideration at this time?

Senator WALSH. I think it is a danger that we ought to avoid, and the point I make is that your legislation should be such as to reach some evil you are seeking to remedy and not such as will breed new ones.

Now, you spoke about milk. The milk producers get whatever they can for their milk.

Mr. LYMAN. I think there is practically no danger of the situation which the Senator has so graphically portrayed here. I do not know of this tendency going on, and I do not know that it is being carried on in any foreign country in Europe. The cooperative movement has been regarded there by the Governments as something that should be encouraged among milk producers and consumers.

Senator WALSH. You have no reason to impute to me anything but the most sincere desire to help you.

Mr. LYMAN. I realize that, Senator. I did not mean to impute any such intention.

Senator WALSH. You really feel that the case I put is not likely to arise?

Mr. LYMAN. That it is not likely to arise.

Senator WALSH. Yes.

Mr. LYMAN. I think the present evils are so great that there ought to be something to correct them.

Senator WALSH. You ought to have legislation so that it would correct them.

Senator NORRIS. I think if that situation should arise it still is not quite so bad as it is now, where you have another agency that has got to be oiled, in the distribution of your milk. In the case the Senator puts there is one organization, where now there are two.

Mr. LYMAN. You see, now he is there on the job, and his money is invested, and he has got a monopoly.

Senator NORRIS. I have really felt for a good while—and I was going to offer an amendment, for two or three years, to the District appropriation bill to try it out in Washington—that milk being something of almost universal use, like water, the municipality ought to take charge, really, of its distribution, the same as it does of the distribution of water—it seems to me it ought to be a municipal function to do it—and take all the profit out of it.

Mr. LYMAN. Senator, may I proceed?

Senator NORRIS. Yes.

Mr. LYMAN. You asked Mr. Marsh to cite one instance where there had been any interference with the cooperative associations of farmers by the Federal Government. If you will turn to page 9 of the Senate hearing, at the middle of the page, you will see that Gov. Deneen speaks about the Federal Government, through the district attorney for Chicago, issuing a subpœna duces tecum to the cooperative marketing company. He states that they served the subpœna, and the subpœna had been served by the State, a year or two ago, by going to the offices and taking documents and correspondence of the market producers' association and the marketing company and the minutes, and they are now in the offices of the district attorney of the United States.

I was out in Chicago not long ago and called at the office, and it was my understanding that they still had those records that Gov. Deneen refers to.

Senator, when you consider that this action was taken at a time when the State campaign was going on, you can see what influence that had, if you understand that the milk producers were acquitted by a city jury not long ago, and this action was taken at a time when the State case was pending, and it had a very harmful effect on the whole matter, and it was feared that it might influence the authorities in the minds of the people.

There is one case cited right there, in answer to the question you put to Mr. Marsh.

Furthermore, after the Clayton antitrust law was passed, with section 6 providing that the associations organized without capital stock and not engaged in business for profit were to be excepted, the Department of Agriculture began a campaign of education and sent out to the various States of the country model nonstock, nonprofit laws, in an effort to get the legislatures to pass these nonstock, non-

profit laws. Now, the farmers in Wisconsin and other States had after years of effort succeeded in securing the adoption of State cooperative laws based on the Rochdale plan, the democratic plan, providing for patronage dividends. In my State the farm organizations felt that the passage of section 6, throwing its weight on the nonstock, nonprofit feature, would be disastrous, because it was aimed at the cooperative movement; and we at that time, back three or four years ago, felt that there should be an amendment to section 6 to make it possible for the farm organizations to go into business, and with capital stock. Our State law required us to have capital stock, Mr. Chairman, and required that we should build up a reasonable surplus from year to year to safeguard the general public, and to make these associations have strength so that they should be recognized, and have standing in the business world.

That campaign went on for the adoption of a different kind of law, a law which we did not understand, a law which would make it very difficult to form nonstock, nonprofit associations. The department has sent out instructions as to how to organize local associations without capital stock, and it takes 20 or 30 typewritten pages, long legal cap size, to explain how they can organize without capital stock. I have always thought it was simply doing by indirection what they are not allowed to do directly, and I thought it would be much better to have a clear cut distinction, and to allow them to have capital stock.

Now, that expression "not conducted for profit," is another breeder of trouble. In a purely cooperative association, Mr. Chairman, the association does not make any profit. It pays interest on the capital stock invested. In many places they pay only 4 or 5 per cent. The Farmers' Equity Union, which is a member of our board, has about 500 farmers' grain elevators, organized on a cooperative plan, and they only pay 3 per cent on their capital stock. They are not in the business for making money for the corporation. They are in the business for selling the products of their membership advantageously.

Senator NORRIS. Of course they are in business for profit to the members.

Mr. LYMAN. Well, I do not call that a profit, Senator. I do not think that is the term we ought to use.

Senator NORRIS. It is perfectly legitimate. Every man wants to make a profit in his business.

Mr. LYMAN. Because it may not be a profit. Suppose that, through a cooperative association, I got 10 cents a bushel more for my wheat than I would if there was no association. Is that a profit?

Senator NORRIS. Yes.

Mr. LYMAN. Senator, here is what I am getting it. Suppose I lost money on my grain in 1918 and that I did not make a profit on my farm.

Senator NORRIS. You would make a profit.

Mr. LYMAN. You understand that many farmers did not make a profit but made an actual loss. Why call that a profit?

Senator NORRIS. Why get away from the profit, now? There is no disgrace to it. It is a perfectly legitimate and perfectly honorable desire to make a profit, and we ought to let everybody make a profit. They must have a profit or they will go out of business.

Mr. LYMAN. I am absolutely for a fair, reasonable profit, and that is why we have farmers' organizations, because it appears that that is the only way we can really make farming profitable.

Senator NORRIS. I see.

Mr. LYMAN. And what I am getting at is that there should be a distinction made between making a profit for the farmers and making a profit for the cooperative association, because in the main they are not in business, as cooperative associations, to make profits for the corporations. They are trying to make farming profitable, and if that interpretation is acepted and applied, it will get away from a lot of misconception which is driving a wedge between the city and the country. They think that these cooperative associations are trying to build up profits. They have in mind the packers and the other great trusts that are building up huge profits, not by any effort of the stockholders, except in so far as they have lent their money. Now, we can get money, Senator, for 6 or 7 per cent in normal times, or less, don't you know, and that is enough to pay. And then we feel that the money from the sale of the farmers' products should go back to the farmers themselves; and when the farmer gets that money he may find that he has made a profit out of his business when he sells his milk and his wheat and his hogs, and figures everything up; he may find that he has made a profit. But the fact is that at the present time the average farmer is not making a profit and he is suffering a loss, and we can see that, because the farmers are flocking into the cities; and that is why we are here asking for some legislation that will encourage this cooperative movement among the farmers of this country. It is the only way they have to fight these monopolies and these great distributors who buy their products. I think you will agree with that; and I think Senator Walsh, with his experience in Montana and the northwest country, knows that there must be organizations of farmers; and if we can show, as I think we have, that they are being prosecuted all over the country under State laws, and that the State prosecutors are pointing to this Federal law and using that as a means to prosecute in the States, there ought to be some remedial legislation.

Senator WALSH. That is really what I am looking for; but I have not heard any of it yet.

You referred to Gov. Deneen's testimony here, and all he says is that a subpœna was issued and that the books of these two companies were gathered in. That is all he says about it. Now, just how, without any proceedings pending—unless it was a grand jury investigation——

Mr. LYMAN. That is what it was, Senator, a grand jury investigation.

Senator WALSH. Even then, there is no authority in the law anywhere for the district attorney to invade the premises of those people and gather in their books. They did it though.

Mr. LYMAN. They did it.

Senator WALSH. All right; but the law did not authorize it to be done. It was a lawless act, but Gov. Deneen does not say they were investigating it under the Sherman Act. It may be that it was under the pure food act that they were proceeding. He just merely states

that the district attorney sent a man out and invaded these offices, and apparently without any authority of the law at all, gathered in their books and took them over to his office, and there they are yet. Now, that is all he says. There is not even any intimation in it that there was any claim that these organizations were organizations in violation of the Sherman Act.

Mr. MARSH. May I ask you a question, Senator Walsh, right there?

Senator WALSH. Yes.

Mr. MARSH. If there were on the statutes a bill similar to this, with these principles incorporated, would it not tend to deter any such lawless act—as I believe you have described it—as that referred to by Gov. Deneen? It would certainly have that strong tendency.

Senator WALSH. That would be the case probably, provided there was some contention that these organizations were existent in violation of the Sherman Act, at which this is aimed. But even that is not suggested, Mr. Marsh.

Mr. MARSH. The condition is the same to-day as at the time that examination was made, and our point is, if Mr. Lyman will pardon me for taking a little more of his time——

Mr. LYMAN. Certainly.

Mr. MARSH. Our point is that such a definite law will give a standing to these farmers' organizations which will probably effectively tend to deter any such act on the part of the Federal prosecuting officer; because they are lawless acts, as you have defined them.

Mr. LYMAN. In an effort to clarify some of these matters, may I ask Senator Walsh whether he would be willing to meet, with yourself, Mr. Chairman, and any other members of this committee, with Mr. Volstead's committee of the House. Mr. Volstead, while he is also a lawyer, has farming land there, and he has told us that he is a member of some of these farmers' grain elevators. Senator Walsh asked whether this bill had been drawn up by anyone with experience, and he refers to the fact that Mr. Miller in his testimony did not refer to the case of the farmers' grain elevators. Now, it seems to me, inasmuch as this bill was drawn up by Mr. Volstead, who has had farming experience in Minnesota, and who owns stock in some of these farm elevators, it might be a mighty good thing for us as soon as possible to have a conference with him. We talked over a good many of these things with Mr. Volstead, and he raised none of the objections which you have raised.

Senator WALSH. Quite obviously. They apparently did not occur to him.

Mr. LYMAN. We discussed many of these things, Senator, and he saw no danger in the situation.

Senator WALSH. I should be very glad to meet with Mr. Volstead. I have a very warm regard for him, and a regard for his ability as a lawyer. But what I would suggest to you is to bring down here the Assistant Attorney General, who is charged with the execution of the Sherman Antitrust Act. I tried to get Mr. Todd here, who for 10 years had charge of the administration of that, and who probably knows better than any other man in the United States about the operation of the Sherman Act, and who could have pointed out to us distinctly what danger there is in the farmers' organization.

Senator NORRIS. Suppose we have the clerk send this bill to the Department of Justice and also to the Department of Agriculture. Has that been done, over in the House, do you know?

Mr. LYMAN. I do not know.

Senator NORRIS. And ask them to make any comments they want to make on it and send anyone here that they think can throw any light on it or suggest any changes.

Senator WALSH. I am sure that Mr. Todd would be very glad to come here and give us the result of a vaster experience of the antitrust act than any other man in the United States.

Mr. LYMAN. My only thought in regard to that is that I understand the Senate is to adjourn in less than two weeks. This bill has been before the Senate committee since last summer.

Senator NORRIS. Personally, I would not have any objection to acting on it right now; but I realize the importance of these things, and I am anxious that when we do report it, if we do report it, we should have behind it all the possible influence that will help it, and I would rather even see it delayed somewhat than to have a fight later on.

Mr. LYMAN. Do I understand that Senator Norris wishes to make a change in section 2?

Senator NORRIS. I feel personally now that I have no objection to all the additional light we can get from any source, and I would like to strike out the words "of their members" from line 8, page 1, and to put in the words "or reduced" after the word "enhanced," in line 12, on page 2; or to amend it in some other way that would have the same effect as that.

Mr. LYMAN. That would make it read, "unduly enhanced or reduced"?

Senator NORRIS. Yes.

Mr. LYMAN. I think the farmers will smile when that is done, because it is absolutely the other way around.

Senator NORRIS. I know it. That might perhaps never occur. But theer is a loophole there by which evil might be accomplished.

Mr. LYMAN. Then you would strike out, in line 8, on page 1——

Senator NORRIS. The words "of their members." I do not want to leave any doubt here in this legislation that would not enable this kind of an organization that we are providing for to handle the products of other farmers besides the products of their own members, and I do not think it would be fair if we precluded them from doing it.

If you do take those words out, it seems to me we would have prevented them from doing what they want to do, and what, in the organizations I know anything about, they do do; and it is perfectly legitimate, and they ought to have the right to do it. I realize that I do not agree with Senator Walsh in his construction there, and if he is right, that is not necessary.

Mr. LYMAN. There are some other matters——

Senator NORRIS. There ought to be no doubt, it seems to me, also, but what these organizations could handle things entirely different from what they produce. For example, the ones I am familiar with buy coal and sell it. I think some of them buy other things besides coal. In the East they would buy fertilizer and handle it.

Mr. LYMAN. It is very important that they should, too.

Senator NORRIS. Yes. Now, I do not want to leave any doubt but what they have the right to do that.

Mr. LYMAN. I think that is all, except that there are some matters that Senator Walsh has raised which I would like to talk about if there were time; but inasmuch as they were hypothetical questions, I do not think it is necessary; and if we can get together with Mr. Volstead and talk some of these matters over in the light of his experience out there as a stockholder in some of these cooperative elevators. So that that is all I have to say.

Senator NORRIS. We will have the clerk, then, send a copy of this bill to the Department of Justice and a copy to the Department of Agriculture, and ask those departments to return the bill with such comments as they see fit to make upon it, and if necessary to send someone up here to address the committee on them.

Senator WALSH. Also, if I am at liberty to do so, I would like to address a letter to Mr. Todd and send him a copy of the bill.

Senator NORRIS. Yes.

Senator WALSH. And ask him for information concerning what he knows about prosecutions against farmers' organizations, or the likelihood of such, and to what extent, if at all, they stand in peril under existing law, and what his views are as to this particular bill, and ask him if he could come before us.

Senator NORRIS. Yes; I would be glad to have him. You gentlemen are all here in town, and we can meet on a day's notice at any time.

Mr. FRAME. Will we be notified?

Senator NORRIS. Yes.

Mr. LYMAN. Senator Walsh, we want to have something done this session. We have not had any farm legislation passed, and it has been pending, and we are anxious to have something done if we could. We have been here all the time, all winter, and this bill was introduced last summer, and we have been here trying to get something done. Our cards have been openly laid on the table, and we have not been carrying on any underhand propaganda. We would like to have something done.

Senator WALSH. Senator Norris spoke to me about this legislation a week ago. That is the first time anybody has ever mentioned it.

Senator NORRIS. I spoke to you when we had the other hearings, Senator, but I presume you have forgotten it.

Senator WALSH. I have forgotten it. Personally, Mr. Lyman, although I am entirely sympathetic with the idea and want to do anything I can to take out your cooperative organizations from the operation of the act, I do not intend to rush into legislation which, as it seems to me, as it is drafted, is very much more likely to exaggerate the evils of which you spoke than to remedy them.

Mr. MARSH. Could we arrange for this meeting or conference next week?

Senator NORRIS. If we could get the reports from these departments. Just as soon as they come in, if the clerk will notify me, I will call another meeting.

(Thereupon, at 12.45 o'clock p. m., the subcommittee adjourned, subject to the call of the chairman.)

ASSOCIATION OF PRODUCERS OF AGRICULTURAL PRODUCTS.

WEDNESDAY, MAY 26, 1920.

UNITED STATES SENATE,
SUBCOMMITTEE ON THE JUDICIARY,
Washington, D. C.

The subcommittee met, pursuant to call, at 2.30 o'clock p. m., in the committee room, Capitol, Senator George W. Norris presiding.

Present: Senators Norris (chairman), Brandegee, and Walsh of Montana.

STATEMENT OF MR. G. CARROLL TODD.

The CHAIRMAN. For the record, Mr. Todd, just state who you are and what your official position is.

Mr. TODD. I was the assistant to the Attorney General from August, 1913, to April 1, 1919.

The CHAIRMAN. Are you connected with that office now?

Mr. TODD. No; I resigned on April 1, 1919.

The CHAIRMAN. What are you doing now, Mr. Todd?

Mr. TODD. Practicing law.

The CHAIRMAN. Here in Washington?

Mr. TODD. In the city of Washington.

The CHAIRMAN. Mr. Todd, Senator Walsh requested that we have you come before the committee to give your ideas of this bill which is before this subcommittee, S. 4344. I wish you would go ahead in your own way.

Senator WALSH. Will you have the record show what familiarity Mr. Todd has with the subject?

The CHAIRMAN. While you were in the department what was your particular line of work?

Mr. TODD. I was in immediate charge of the enforcement of the antitrust laws, the Sherman Act, the Clayton Act, and related acts of Congress.

Senator WALSH. With what prosecutions under any of those acts of any particular moment were you associated?

Mr. TODD. The more important ones were the prosecution against the anthracite coal combination, that is sometimes known as the Reading case, and the prosecution against the Steel Trust or the Steel Corporation, the Harvester case, the American Can case, the Eastern States Lumber Dealers' Association, and I could go on at considerable length.

Senator WALSH. That will be sufficient for the present purpose.

Let me inquire, Mr. Todd, during any of the period of your service in the Attorney General's office were you ever called upon to inquire into the validity of organizations of farmers?

Mr. TODD. I was; and also of workingmen—labor organizations.

Senator WALSH. And what was the nature of the inquiry that you were obliged to prosecute concerning the legality of operations of farmers' associations or organizations?

Mr. TODD. From time to time complaint would be made that associations of farmers were violating the antitrust law in that they were selling their product collectively and at the same time in that way suppressing competition among themselves.

Senator WALSH. Can you refer us to any particular organization or association against which charges of that kind were laid before the Department of Justice?

Mr. TODD. Yes.

Senator WALSH. Do so, please.

Mr. TODD. The one I have especially in mind was the one against the Dairymen's League.

Senator WALSH. Take the Dairymen's League; have you in mind generally the plan of operation of that organization, the plan of its organization and its operation?

Mr. TODD. I do not know how specific I could be. As I recall it, it was a plan under which the dairymen met and agreed amongst themselves upon a price at which they should sell their milk.

Senator WALSH. Then it was a straight price-fixing agreement between independent proudcers?

Mr. TODD. Yes; they were associated for the purpose of arriving at a price at which they should sell their milk. There were, no doubt, incidental activities, but those have passed out of my mind because my thought was centered on the question whether an association of dairymen for that purpose was unlawful under the Sherman Act.

Senator WALSH. Then apparently there were various dairymen's organizations or individual dairymen engaged in producing milk that formed themselves into some kind of a voluntary association or otherwise and they met with a view of fixing prices at which their product, the milk, should be sold?

Mr. TODD. That is my recollection of the broad outlines of their organization.

Senator BRANDEGEE. Was this Dairymen's League a Nation-wide organization or was it only in certain States?

Mr. TODD. There were associations in particular States, in Illinois and Wisconsin, for example, and about New York. My impression is that they were united in some way into a national organization.

Senator BRANDEGEE. Did you have occasion to look into their form of organization? Was it simply a volunteer association or a legal corporation?

Mr. TODD. I think in some States it was purely voluntary, forming an association, and in others it was a corporation. I could not name the States in which it was one and in which it was the other. I think it appeared in both forms.

Senator WALSH. What came of the matter?

Mr. TODD. My conclusion was while we could not say that the law was perfectly clear, the doubt was too serious to warrant the Government in instituting prosecution.

Senator WALSH. Then anyway, that kind of an association, be it good or evil, fell under some peril of being prosecuted under the Sherman Act?

Mr. TODD. Oh, yes. I have it in my own mind, rightly or wrongly, quite a definite standard to apply in reaching a conclusion as to whether the case should be prosecuted or not. That standard was, first, whether if any showing could be made that the price fixed was excessive or, secondly, whether any showing could be made that any coercive measures were employed to bring dairymen into the league against their will or to exclude them from the league when they wanted to come in. In either of these latter two contingencies which I mention, either on a showing of excessive prices or on a showing of coercive practices of the kind which I have indicated, I should not then have thought that they were exempt from prosecution.

Senator BRANDEGEE. Did you find that members of these associations got a better price for their product than those who were not members?

Mr. TODD. I really could not say as to that. That concerns more the economics of it.

Senator BRANDEGEE. I thought you were considering whether they were charging a higher price or whether they enhanced the price.

Mr. TODD. Yes; but I do not know that I made any definite comparisons between the price which was charged by dairymen who were in these associations and those which were charged by dairymen outside. In the particular case which I have in mind, for the reasons which I have stated, no prosecution was instituted. In other words, I considered that section 6 of the Clayton Act, plus the proviso which appeared annually in the appropriation for the enforcement of the antitrust laws, in effect came to this, that the intention of Congress was that organizations of farmers for the purpose of bargaining collectively, and as a necessary incident of bargaining collectively, to fix the price at which they should sell, was not a combination in restraint of trade unless it showed that the prices exacted were excessive or else it was shown that the association resorted to some form of coercion to bring into its membership farmers who did not want to come in. I do not know whether I have made it sufficiently clear or not.

Senator WALSH. Was there any other similar prosecution against farmers' organizations?

Mr. TODD. That was the one which was most carefully considered. There were some complaints against two or three of these associations in California.

The CHAIRMAN. Fruit growers' associations?

Mr. TODD. Fruit growers' associations. One, I think, was the California Raisin Association, and another, I think, was the California Lima Bean Association. Those associations were investigated by the district attorney on the spot, who reached the conclusion that there were not sufficient grounds for prosecution, and his conclusion in that respect was concurred in by the department.

Senator WALSH. Do you recall just exactly what kind of an organization the lima bean organization was and what there was in its method of operation that gave rise to the charges?

Mr. TODD. No; I do not. Of course, in practically all these associations I think there was this element which we have just spoken of. I should not say in all of them, but in those that came under my notice this element of collective bargaining and, as incidental to

that, fixing the price—in effect, fixing the price—was present. What other elements were present in those California associations I do not recall. I have an impression that in the California Raisin Association case there were some additional elements which made our decision a very difficult one to reach. I could not remember specifically what they were. It seems to me, for one thing, they have the voting power narrowly concentrated, but I could not speak positively about that because those particulars have passed out of my mind.

Senator WALSH. Let me direct your attention to another channel, for a moment. In the western part of the country, and I dare say to a greater or less extent in the East, they have what is known as farmers' elevator associations. A number of farmers dissatisfied with the way they are treated by privately owned elevators in the locality organize and associate themselves in a cooperative way, either by a voluntary association or through charter, which gives them a legal existence, associate themselves and build an elevator of their own, buying the grain of the members or keeping it on storage and transacting business in the same way with persons outside the organization who care to deal with them. Do you find anything in an organization of that character that would in any way fall under the condemnation of the Sherman Act?

Mr. TODD. I never had occasion to consider that while in office. Elevators, of course, are in the nature of public-service companies, and I imagine in most of the States the reasonableness of their prices for their service and the fairness of their practices are subject to governmental regulation.

Senator WALSH. Of course, each of these elevator companies would naturally ship the product that it bought or that it held on storage to the terminal elevators in the different States, and thus it would be engaged in interstate business. But my inquiry of you is whether you find anything in an organization of that character that would bring it even into peril of prosecution under the Sherman Act?

Mr. TODD. Nothing occurs to me at the moment.

Senator WALSH. Let me go a little further. Another organization doing an extensive business in that line in the Western States—all the Western States—is what is known as the Equity Association. That is a similar organization. A number of farmers in a particular community band themselves and form a branch of the Equity, as it is called. They immediately build an elevator. Now, being dissatisfied with the treatment that they get when they ship to the terminal elevators, they confederate themselves into a State society of equity, the Society of Equity of the State of North Dakota, for instance, and it builds or rents a terminal elevator at Duluth or Minneapolis, and thus engages in business, getting consignments for the terminal elevators from the primary markets, or elevators at the primary markets. Do you see anything in such an organization that would in any way be in peril of prosecution under the Sherman Act?

Mr. TODD. No; I do not.

Senator WALSH. So that apparently the only associations that you have in mind that would come under the condemnation of the Sherman Act would be associations that would become federated and agree to fix prices, or individuals who would associate themselves and agree to fix prices?

Mr. TODD. That is the kind of association which I had immediately in mind.

Senator WALSH. Associations of that kind would be in more or less peril?

Mr. TODD. Their legality has from time to time been called in question. I do not recall any case where the legality of these other types of association of which you speak have ever been called in question, so far as complaints before the Department of Justice are concerned.

Senator BRANDEGEE. Supposing the cotton planters should form an association with capital stock as is provided for in this bill and should agree, among other things, to hold their crop in the warehouse and not to sell it until it reached the price fixed by them. Now, whether or not they would fall within the inhibitions of the Sherman antitrust law would involve the facts and circumstances of the case, would it not? You can imagine a case where they would be prosecuted on the claim that they were violating the Sherman law in restraint of trade or tending to monopolize, would you not?

Mr. TODD. Yes; under the law as it stands with this legislative construction.

Senator BRANDEGEE. Is not that confined to associations without capital stock?

Mr. TODD. No, Senator; in each of the appropriation bills appropriating money for the enforcement of the antitrust laws for some years past there has been this provision:

Provided further, That no part of this appropriation shall be expended for the prosecution of producers of farm products and associations of farmers who cooperate and organize in an effort to and for the purpse of obtaining and maintaining a fair and reasonable price for their products.

Nothing is said there about whether the association is voluntary or in corporate form. Of course, it is not substantive law, but it is pretty persuasive legislative construction as to what Congress means to be included within the term "restraint of trade."

The CHAIRMAN. Mr. Todd, on that point, these people are complaining, as I understand it, not so much that the existing law makes them criminal when they organize, as the fact that some one will complain, they fear, and it keeps men out of the association. They do not organize, because they do not want to have the charge made against them. That rider put on an appropriation bill simply limits the appropriation.

Mr. TODD. That is true.

The CHAIRMAN. It would not remove that fear, it seems to me, that rightly or wrongly exists in the mind of the farmer, because, notwithstanding that rider, if there was any other money available for these prosecutions they could be prosecuted just the same, and I think in one instance President Wilson in signing, when he first became President, I think, the first appropriation bill, when the rider was on, he signed it, but he issued a public statement in which he said that he did not approve that rider, but he signed the bill nevertheless, because he had enough money in other appropriations with which he could prosecute those organizations notwithstanding that. Do you not think that that kind of statement, together with the fact that this is only a limitation on an appropriation, might excite a

great deal of fear in men's minds and keep them out of organizations of this character that they might otherwise go into?

Mr. TODD. I sympathize very strongly with the proposition, because as an official of the Department of Justice I would have welcomed a clear definition of the status of both farmers' organizations and labor organizations under the law. It would have been a very great assistance in intelligent enforcement of the law if their status had been more clearly defined.

The CHAIRMAN. So long as you, an official of the department, have some doubt, you would not be surprised that the farmer would have had doubt?

Mr. TODD. Not at all. As an official I should have welcomed some clearer definition of their status under the law.

Senator BRANDEGEE. Now, the rider that you have just put in the record, which you say has been carried in the appropriation bills of several sessions of Congress, provides that the appropriation shall not be expended in any part for the prosecution of these farmers' organizations in their efforts to obtain a fair and reasonable price?

Mr. TODD. Exactly.

Senator BRANDEGEE. But I asked if the cotton men should combine and hold back their products for a price, which was not fair and reasonable, they would not be immune from the provisions of the Sherman law?

Mr. TODD. Not at all.

Senator BRANDEGEE. It all depends on whether the price is fair and reasonable or not?

Mr. TODD. Exactly. In the early part of my statement I said that the rule of conduct, which I had formulated for my own guidance in view of the somewhat doubtful statement of the law was this, that when the legality of the farmers 'associations collective bargaining was challenged, I endeavored to subject it to this twofold test; first, was the price excessive; and secondly, had they resorted to any coercive practices either to exclude farmers who might want to come in, or to bring in against their will farmers who might want to stay out. Those were the two tests.

Senator BRANDEGEE. Would not those two tests in your opinion be implied by the Department of Justice in prosecution for the violation of the Sherman law? For instance, if the price was not raised by the association, there could hardly be presumed an attempt to monopolize. The only object of monopoly is to obtain a higher price, I assume. Nobody has been prosecuted for lowering prices, has he?

Mr. TODD. No; not that I know of. But if, for example, a group of manufacturers get control of a dominant portion of a particular field in which they were engaged, and should make an agreement to fix prices, under the law as I understand it, no inquiry as to reasonableness of their price would be open. It was a suppression of competition among those who by their dominance in the field in effect were able to control.

Senator BRANDEGEE. And yet the one merit that competition has is for the purpose of lowering prices.

Mr. TODD. Well, of course, the history of the origin and purpose of the antitrust act is a rather long one. I think that you will find,

Senator, that the purposes were not only economical, but were social as well; that the law was directed not only to the end of obtaining lower prices, but also against the institution of a monopoly as such, whether it produced lower prices or higher. In other words, monopoly was considered to be a social as well as an economic evil.

Senator BRANDEGEE. I think only on the theory that it naturally tended to higher prices. However, that is a matter of opinion. My only object was to call attention to the fact that the rider in the appropriation bill simply prevented the use of the appropriation to prosecute the associations when they are seeking to obtain a fair and reasonable price.

Mr. TODD. Exactly. And even to that extent it has not the force of substantive law. The force is a legislative construction.

Senator BRANDEGEE. That is a limitation on that particular appropriation, because if dropped out of the appropriation bill, it ceases to operate.

Mr. TODD. But recurring year after year I consider it, while not having the force of substantive law, having the force of legislative construction.

Senator BRANDEGEE. Persuasive construction rather than direction.

The CHAIRMAN. Have you any remembrance of the class of people it was that made the complaint? Were the complaints received from farmers or fruit growers that were left out and wanted to get in, or from consumers, or what class of people?

Mr. TODD. I must admit that I have forgotten entirely.

The CHAIRMAN. It is not important except that it might throw some light on the organization itself, if from those engaged in a similar business who were not in the organization.

Senator WALSH. Mr. Todd, I want to invite your attention to a feature of this thing, following the idea in the mind of Senator Brandegee. You will observe this provides simply that persons engaged in the production of agricultural products as farmers, planters, ranchmen, dairymen, or fruit growers may act together in the associations, corporate or otherwise, without capital stock, in collectively processing, preparing for market, handling, and marketing in interstate and foreign commerce.

Now, you spoke about price-fixing agreement. Now, you will observe that the words "agreement" and "contract" used in the antitrust act is not in here at all.

Mr. TODD. Yes.

Senator WALSH. It does not reach to agreement between individuals for the purpose of fixing prices, nor does it apparently reach to agreements between independent associations for the purpose of fixing prices. It simply refers to associations themselves.

Mr. TODD. Yes.

Senator WALSH. Now, suppose it were possible for all the cotton growers of the United States to get into one association and to agree that they would sell their cotton only to that association, and that association has a board of directors, and it would dispose of the cotton as the board of directors saw fit, put it on the market when they saw fit, sell it for any profit they saw fit, would you say under the antitrust act that we could prevent that kind of thing?

Mr. TODD. As it stands now?

Senator WALSH. Yes.

Mr. TODD. Yes; I would.

Senator WALSH. What is there in it?

Mr. TODD. I should think that that would be clearly a combination in restraint of trade as well as a monopoly, with no limit as to the price they might charge, with power to determine to whom they would or would not sell the entire source of supply.

Senator WALSH. What is the difference between that and the farmers' elevator company I spoke to you about?

Mr. TODD. As I understand that case, they were isolated units in particular towns, and while, of course, they shipped their product into interstate commerce, primarily they were engaged in buying from the immediate surrounding country. There was no federation.

Senator WALSH. But, Mr. Todd, it would be useless to buy if they did not sell?

Mr. TODD. Certainly.

Senator WALSH. Of course, the selling is as much contemplated as the buying, although selling always in interstate commerce, so that that feature seems to be involved just the same.

Mr. TODD. The case you put with respect to cotton seems to me to be infinitely more comprehensive in its scope than the case of the small elevator.

Senator WALSH. Quite right.

Mr. TODD. With anybody else free to construct another elevator at any time, whereas if you combine all the cotton growers of the United States into a single corporation, without any limit as to the power of fixing the price——

Senator WALSH. Well, all right, let us limit it, then. Let us say that this association springs up this way, and that growers in one county of Virginia associate themselves to agree to market their article only through that association. They appoint a board of directors. That would not be very essentially different from a farmers' elevator company, would it?

Mr. TODD. Another fundamental difference, it seems to me, Senator, is the one which I spoke of when you first stated the illustration of the elevator, and that is it is in itself a public service, and its rates and practices are subject to the regulatory power of the State.

Senator WALSH. It is bound to be the same with the other, because if you have all the cotton growers in a county federated or associated for the purpose of handling their cotton, they must have a warehouse or a shed up somewhere.

The CHAIRMAN. In that case, however, they would come in competition with the product of cotton growers in all the United States.

Senator WALSH. That is what I want to follow. Would that association in Virginia be any more safe from prosecution than the wheat association in Montana and Nebraska?

Mr. TODD. I do not see that it would be. But I do not want to lost sight in the discussion of the distinction between growing and buying and selling products. Elevator service is subject——

Senator WALSH. Let us dismiss cotton and go back to wheat.

Mr. TODD. It is a public service and its rates and practices can be fixed by the public-service commissions of the several States.

Senator WALSH. But, of course, Mr. Todd, if the rates of the wheat elevators can be fixed by Government regulation, undoubtedly the rates of the cotton warehouse can.

Mr. TODD. Oh, yes; of the warehousemen, but not necessarily the rates at which the cotton grower sells his product.

Senator WALSH. It is the same way. The wheat grower sells his product. Let us take the wheat grower.

Mr. TODD. Let me be sure that our minds are not at cross purposes. When I spoke of the elevator service I was not referring to the selling of the wheat itself. I was referring to the service in storing the grain. It is that which I had in mind when I said the rate or the charge is subject to the regulation of the public-service commissions of the particular States in which the elevator is located.

Senator WALSH. Yes; but it seems to me that that is altogether aside from the Sherman Antitrust Act. Let us go back to that. The service of an elevator man, which is merely for the storage of the grain, was not in my mind at all when I spoke to you of that association. A lot of farmers associate themselves for the purpose of marketing their wheat, and they built an elevator, and they sell or store their wheat in this elevator, and the elevator association either ships it on commission to the terminal elevator or ships it or sells it to the terminal elevator. Now, my inquiry from you is whether there is anything in that that violates the Sherman Act?

Mr. TODD. No; I do not think so.

Senator WALSH. Let us assume, then, that one of these local elevator associations proves so very serviceable to those that have entered it that the farmers in another county associate themselves in exactly the same way and they build 1, 2, 3, or 10 elevators, as the case may be, in the county. Would there be anything in that that would be violative of the act?

Mr. TODD. There comes a time when you have to draw a line.

Senator WALSH. That is what I wanted to know.

Mr. TODD. It is a very similar case of having a common selling agent. A group of men for the purpose of marketing their product in the most economical way can up to a certain point employ a common selling agent for that purpose, but if all of those engaged in the particular field should employ a common selling agent, you would have a very serious question as to whether you would not have a monopoly. In other words, that very difficult line which you sometimes have to attempt to draw in law has to be drawn between a selling agency that does not embrace so large a proportion of the community as to substantially suppress competition in the trade and the selling agency which does. Now, it seems to me that in the case of the wheat farmers or your cotton farmers, putting out of view now the question of whether the price is reasonable, then under the exemption in the proviso which I have quoted there would doubtless come a point where it would be said that the association had embraced so large a proportion of wheat growers or of cotton growers that the suppression of competition amounted to restraint of trade. It is not supression of competition, it is restraint of trade. But the time comes in the forward march of suppressing competition when suppressing competition does become restraint of trade. That is a line which it is very difficult to draw.

Senator BRANDEGEE. There would not be any question about this would there in your opinion if all the anthracite coal producers in the State of Pennsylvania should combine and agree that they would not sell to anybody else except a committee that would consign their goods to a committee of their own choice and at the price the committee fixed and none other.

Mr. TODD. Surely.

Senator BRANDEGEE. It would be a combination in restraint of trade under the Sherman law, would it not?

Mr. TODD. Absolutely.

Senator BRANDEGEE. How would that agree with the instance introduced by Senator Walsh as to all the cotton growers of a county combining under a similar agreement.

Mr. TODD. It would differ in this respect. In the case you put with respect——

Senator BRANDEGEE. Except as to size.

Mr. TODD. That is the difference. I think that is a vital difference.

The CHAIRMAN. In the case of the anthracite miners that you give in this illustration, you have practically got everybody in the United States in it, and in the other case you have a very small part of the cotton producers of the United States.

Senator BRANDEGEE. I am taking a single county in the State of Pennsylvania, or a single county in the State of Texas as to cotton. Certainly one can do anything legitimately that the other can.

Mr. TODD. But the difference between the two cases, Senator, is that the production of that anthracite coal is in a very small area in Pennsylvania, all of it in three counties, I think.

Senator WALSH. And a very few owners in those three counties.

Senator BRANDEGEE. Take bituminous coal in the State of Pennsylvania. We have plenty of bituminous coal in the other States of the Union. Would such an agreement involving bituminous coal in Pennsylvania or New York or Indiana or West Virginia, in your opinion, be in danger of inquiry and possibly of prosecution on the claim that it was in violation of the Sherman law?

Mr. TODD. I should think it would be in great danger. There are some selling agencies that have groups of coal mines—a dozen or more. A dozen or more coal miners or owners will sell their products through one selling agency, and where the combined project of the group is not so large as to give them control of the market in which they sell or come close to giving them control of the market in which they sell, and where there is no purpose to monopolize, I should say they would not.

The CHAIRMAN. Is not that one of the principal tests, the purpose, and the other is whether the combination embraces enough of the supply of the products so that by combination it can materially affect the price of the whole product?

Mr. TODD. That is exactly so.

The CHAIRMAN. Is not that one of the tests?

Mr. TODD. The test in the equivocal cases, in the cases on the border line, where it will be difficult to say the purpose. It is not only one of the tests but I think is the controlling test in deciding on which side of the line a combination would fall.

Senator BRANDEGEE. Supposing the farmers in New York State that were within a fair shipping distance of the city of New York

should organize under this modified bill into an association for the processing of their products. Would it not be possible under the provisions of this bill for them to create such a situation so that they would be liable to prosecution, or ought to be if they raised the price; I mean raised the price unduly?

Mr. TODD. Under this bill, as I have rather hastily read it, I think that if they raised the price unduly they would be liable to prosecution.

Senator BRANDEGEE. If the Secretary of Agriculture found that they did not raise it unduly?

Mr. TODD. I thought in the case you put that they had raised it unduly.

Senator BRANDEGEE. Somebody claims they did. The Secretary has a hearing and he says that they did not raise it unduly.

Mr. TODD. That would be the end of it as I read the bill.

Senator BRANDEGEE. So that he never gets to the court and to a judicial determination of whether it has been raised. If the Secretary decides it has been unduly raised, the other side can appeal to the court.

Mr. TODD. But if he decides that it has not been, under this bill that is the end of the matter.

Senator WALSH. All this is aside from the question originally proposed to you by the chairman, Mr. Todd, and we entered into it upon my initiative. The chairman asked you what you had to say with reference to the bill that is before us, what your view is about it, whether you have any suggestions to make.

Mr. TODD. I believe that I have incidentally——

Senator BRANDEGEE. You do not appear here in the interest of anybody concerned. You were justi nvited.

Mr. TODD. It is voluntarily purely, in response to Senator Walsh's invitation.

I do not know that I have anything to add to what I have said incidentally in response to questions which have been asked. I repeat that I think the status of farmers' organizations and of labor organizations under the law is in need of clarification. I sympathize with that because I would have welcomed it myself.

The CHAIRMAN. Do you think this bill does it? Is there anything wrong about it in your judgment?

Mr. TODD. I have not given this bill critical study, Senator. I got it yesterday afternoon, and I have read it over several times. I made a suggestion or two informally before the meeting.

Senator WALSH. Before you go into those, let me ask you, in view of your experience and your familiarity with the antitrust law and the evils against which it is leveled, what is your view about this legislation? Does it permit of acts which in your judgment, guided by the experience you have had, are reprehensible or questionable? In other words, does the general spirit of the legislation meet with your approval?

Mr. TODD. The general spirit entirely. I think this, speaking now of the standpoint of the general underlying thought, that all associations of men are subject to abuse. But it has always seemed to me that associations of those engaged in agriculture and of associations of workingmen, are subject to abuses of a different sort than associations of capital, and that to attempt in the same law

to correct the abuses of all three classes of associations often leads to, well, it makes the law very difficult of enforcement, and often leads to very disappointing results.

The CHAIRMAN. Sometimes it leads to injustice, in your judgment?

Mr. TODD. I think it does. As long ago as 1873, as I recall it, the English Parliament expressly exempted labor organizations from the law of restraint of trade. I do not have the statute at any finger tips, but the associations of workingmen and organizations of the farmers of course, may lead to evils and abuses, but it has always seemed to me that the character of evils and abuses to which they were liable to lead were of a different sort from those growing out of the association of capital, and could better be dealt with by codes of law.

Senator WALSH. Getting back to the other question, do you think now of any practices in trade of any associations that would be tolerated under provisions of legislation of this character, that to your mind ought not to be permitted?

Mr. TODD. From a hasty reading it occurs to me that additional safeguards might be thrown in, provisions that would protect farmers from being coerced into joining these associations against their will, and also provision which would permit all of those who wanted to enter, to do so.

The CHAIRMAN. Let them enter as a matter of right.

Mr. TODD. Yes.

The CHAIRMAN. Of course, I can see how it might be if in some community of farmers there might be some in there that for good reasons decent men would want to keep out.

Mr. TODD. Certainly, there ought to be some flexibility to the provision, but broadly speaking all men who are not as you say debarred by good reason.

The CHAIRMAN. It would be difficult to define.

Mr. TODD. It would; but yet it seems to me that it would be perhaps unfortunate to leave the matter without any provision.

The CHAIRMAN. I had thought of that point in connection with this bill considerably. I would like to get out of the dilemma if I could, but I have always gotten into more difficulty when I tried to draft anything that enables people to come in as a matter of right than I have obviated, and is not that one of the difficulties that it is going to be impossible for us to obviate. If we want to draw it down that fine, how could we define in law a method by which men could have the right to come into these organizations without letting in men and leaving loopholes that would let in men that everybody would concede ought to be kept out?

Mr. TODD. It is very difficult. You face very difficult alternatives there. As a matter of legislative draftsmanship, it would tax one's ingenuity.

The CHAIRMAN. Do you think it could be done? And, after all, is not that more imaginary than otherwise. Do you suppose there will be any real difficulty in good farmers being kept out of these organizations, as a matter or practice?

Mr. TODD. I really do not know. I am not sufficiently well informed really to venture an opinion. I am not at all sure but what I would be ready to say that you might well wait the appearance of

that evil before attempting to deal with it, in view of the difficulties of framing a provision which would be workable.

Senator BRANDEGEE. Now, Mr. Todd, I sympathize with the proponents of this measure—any desire to find some method of collective bargaining and getting a fair price for their product—and I have no doubt the other members of the committee do also. But I should like to do something to help them. I realize the helplessness of the ordinary farmer to contend with the mercantile conditions and the transportation problem and the storage and the marketing of his product. Frequently he does not produce enough to do it alone, anyway, under modern conditions and do it successfully.

Mr. TODD. He is not on equal footing unless he is associated in some way.

Senator BRANDEGEE. I appreciate that in numbers there is strength, and if they get enough together to handle it in a wholesale way they can do it more economically. All those bills I can sympathize with, and I want to do something to relieve them of their burden if it can be done without sacrificing the principles of the Sherman law, which we framed to protect us from the dangers of monopolies and higher prices.

I want to call attention to the first page of the bill and ask you a question. It provides—I will skip some of the phraseology—

> That persons engaged in the production of agricultural products * * * may act together in associations, corporate or otherwise.

Whether that means that all the corporations they form may act together also?

Mr. TODD. "May act together in associations."

Senator BRANDEGEE. Yes—

> Corporate or otherwise, with or without capital stock, in collectively processing, preparing for market, handling, and marketing in interstate and foreign commerce such products of their members; and such producers may organize and operate such associations and make the necessary contracts and agreements to effect that purpose, any law to the contrary notwithstanding.

Now, the law at present would prevent a combination in interstate commerce for the purpose of raising the price or unduly restraining trade by that method. Now, this gives these gentlemen, incorporated or otherwise, the right to market their products, transport them, handle them, and market them in interstate commerce, and to make all the necessary contracts and agreements to effect that purpose. Now, if they do make a contract under this to pool all their products and to agree not to sell to anybody else, and to fix a price, why does not that authorize them to violate the provisions of the Sherman law, "any law to the contrary notwithstanding."

Mr. TODD. I think this does put them on a different legal footing from a group of manufacturers or traders. In other words I think that with the passage of this law there would be this main difference between the status of a group of manufacturers and traders and a group of farmers, that a group of manufacturers and traders who occupied a dominant position in their particular field who agreed upon the price at which they would sell would violate the Sherman law, whether that price were reasonable or unreasonable, whereas the group of farmers, although they might occupy a dominant position in the particular field of production in which they were engaged who

belonged to these associations and through those associations fixed the price at which they would sell, would not violate the Sherman Act if the price were reasonable.

The CHAIRMAN. And the person who would pass on that would be the Secretary of Agriculture.

Mr. TODD. Yes; under this bill. In this bill it seems to state the main distinction in the legal status of the two classes of associations.

The CHAIRMAN. Let me ask you if the definition which you have just given ought to be a little bit further modified by the fact that the two provisions contained from lines 3 to 8 on page 2 of the bill that have got to be complied with, that one or the other of those two things must be provided in this organization with a view and an object, I suppose, of preventing monopoly, that no member of the association is allowed more than one vote regardless of the amount of stock he may have, that the association could not be controlled by one man buying up all the stock and thus controlling the situation, so that they can not make more than 8 per cent on the capital stock.

Mr. TODD. Those provisions have a moderating effect upon the association unquestionably, and those provisions, particularly the suggestions—I do not know whether it is in addition to what I have said or not—but at any rate I should like to leave it, it seems to me, to the absolute free agency of farmers to enter or not to enter these associations and to withdraw if they want to after they have entered. Those should be preserved, because as long as such free agency exists you have potential competition.

The CHAIRMAN. Does not that exist now? Could not they withdraw any time they wanted to, in your judgment?

Mr. TODD. I do not think there is anything in this act that would prohibit them in the slightest. Whether there should be a prohibition against any measures of coercion with a view to restricting that free agency it what I suggest. Even amongst manufacturers and traders an association to fix prices, as long as there are no penalties for withdrawing and as long as each member retains his free agency, you have potential competition, even in trade. That competition has always seemed to me to be infinitely less evil than this permanent amalgamation of competing units into huge aggregations which for all time destroy the competitive relations. In other words, it seems to me that for all of the dominant proportion of manufacturers—to view that side of the question—to enter into an association to fix a price is infinitely less dangerous from the standpoint of public welfare than for that same body to form a huge corporation and for all time destroy the competitive situation. I got off the track just a little.

Senator WALSH. I called your attention a while ago to the possibility of elimination of competition between two elevators' or farmers' associations absorbing rival elevators and possibly securing a monopoly. Of course, you can easily understand that it could spread its operations over the entire county and absorb everything. Such a thing is not likely, but not inconceivable, is it?

Mr. TODD. No.

Senator WALSH. A good deal of this agitation evidently has arisen out of the operations of the milk producers and milk dealers. Apparently that was one of the subjects that engaged the attention of the Department of Justice.

Mr. TODD. Yes.

Senator WALSH. We might easily conceive of the milk producers in a certain locality adjacent to the city of Washington associating themselves, being dissatisfied with the distributing agency here, establishing a distributing agency of their own, and 20 or 50 producers of milk around the country gather together and form a corporation, and they rent a house in the city here and make their center of distribution; they all bring their milk there and that association distributes the milk—markets it. You can readily conceive that that association might so prosper as to practically put the independent milk producers out of business and buy out the other distributors, and thus get a monopoly of the distribution of milk in a particular city. That would be entirely authorized under this bill, would it not?

Mr. TODD. I think it would be subject to the provisions for insuring a reasonable price.

Senator WALSH. It does not seem to me that when a thing of that kind occurs, when they actually establish a monopoly in a great city like this, the people ought to be compelled to go before the Secretary of Agriculture and establish that the price is too high. Should not the evil of the monopoly be guarded against at the outset and not be obliged to be established that the prices were unduly high? In other words, let me ask you if you find anything questionable about a provision in the bill which would read substantially this way:

> Nothing herein contained shall be deemed to extend the scope of the act of Congress entitled—

The Sherman Antitrust Act; we do not want to extend it to any associations that are not now subject to it—

> nor to authorize the acquisition of a rival business or to legalize the creation or attempt to create a monopoly.

Mr. TODD. Of course, under the existing law, one, under certain sets of circumstances, can acquire rival businesses without violating the law.

Senator WALSH. But this does not say they shall not do it. If under the existing law he is permitted to acquire a rival business, of course this does not prevent him from doing it. The point is that nothing in the statute shall authorize him to do it to acquire a rival business. That is the meaning of this. In other words, if under the existing law he is forbidden to acquire a rival business he would still be prohibited from acquiring a rival business under this law. In other words, in order to get the relief for the commendable farmers' cooperative associations we are endeavoring to give them, do you see any necessity of permitting them to consolidate rival businesses?

Mr. TODD. No; it does not seem to me that that enters into their legal problem at all, as I understand it. In other words, the thing which you want to make sure of here is their legal right to bargain collectively. It does not seem, in order to do that, that they must have the right of consolidating each other's business into one huge amalgamation.

Senator WALSH. Then what would you say about such a provision as that in the bill?

Mr. TODD. The only objection that I see to it is that it introduces some terms which, although the subject of judicial construction for generations, are still of very doubtful meaning.

Senator WALSH. That is a "monopoly" or an "attempt to establish a monopoly"?

Mr. TODD. Yes.

Senator WALSH. That does not add any embarrassment to the present condition.

Mr. TODD. No; it does not add any embarrassment to the present condition. Whether it affects your purpose of clarifying the present condition is a question in my mind; in other words, whether as the result of adding that you do not leave in pretty nearly full force the present obscurity and lack of definiteness.

The CHAIRMAN. In the case the Senator put, in the illustration about buying milk and the distributors getting a monopoly on the distribution of milk in a city, it would be conceded that the most economical way of distributing milk in a city would be to have it done by a monopoly. Certainly it is not economical to have two or three milk organizations with wagons running up every street in town. The overhead expenses amount to a good deal, and the distribution of milk costs more than the farmer gets for the production of it in the history of all the cities, I think. If the monopoly was safeguarded so that an unreasonable price could not be charged to the consumer, it ought to get the milk to the consumer at a less rate, if there was only one distributing agency in the city, than if there were half a dozen. It seems to me that that must follow. It is almost like a distribution of water.

Senator BRANDEGEE. That principle might apply to any commodity.

Senator WALSH. The trouble about that is, though, that when they have a monopoly then it may elevate the price to any point.

The CHAIRMAN. Exactly. The thing that ought to be guarded against is going above the reasonable price. I have always thought, for instance, that the distribution of milk—it seems to be one of the difficulties in this legislation—is something that ought to be controlled the same as the distribution of water in the city. It is just as necessary.

Senator WALSH. Whether necessary economies would be introduced or not is always a question. Suppose that a monopoly for distributing milk in the city of Washington employed nothing but horses, and had a large lot of horses, but it could be shown that the distribution of milk could be made more economically by employing trucks?

The CHAIRMAN. Then they ought to be required to employ trucks. You could use the same argument against the distribution of water, or the use of two telephone systems. If two systems were competing, the price would be cheaper, but the overhead expenses would be greater.

Senator WALSH. The only power of the Secretary of Agriculture is to determine whether the price has been unduly enhanced.

The CHAIRMAN. I can see, Senator, a question that your language does not attempt to meet, it seems to me, and that is, there might be reasonable grounds for complaint to require people who feel aggrieved to go before the Secretary of Agriculture. They might be in Chicago or San Francisco, and if a case of that kind should occur in the distribution of milk it would probably be wrong to expect them to be required to go before the Secretary of Agriculture to make complaint about it. They ought to have a closer tribunal.

Senator WALSH. In my city of Helena, all the milk dealers consolidated and there is only one, and I think that they make us pay too much for milk. I am not going to file a complaint before the Secretary of Agriculture and go into an expensive inquiry as to whether my milk bill should be $100 or $120. That is a matter of only $20, more or less, and the consequence is that there would be no inquiry.

Senator BRANDEGEE. Just think of it. This bill says that persons engaged in the production of agricultural products, which means every kind of agricultural product—and it proceeds to give instances, as "farmers, planters, ranchmen, dairymen, or fruit growers," which takes in all the producers of agricultural products—may combine in associations, make contracts and agreements as to prices of their goods, etc., and not be subject to interference of any other law than this one. Now, that is the whole field of agriculture, including the cattle and cotton and everything that is produced from the soil in the United States of America. Under the terms of this bill the prices fixed by those associations controlling the entire agricultural products of the United States can not be questioned except by the Secretary of Agriculture, who is not a court but a political appointee, irresponsible to anybody except the President of the United States, and subject only to impeachment, and his opinion as to the price of all the vast agricultural products of this country is to be final and conclusive unless he decides one way. As long as he decides that the price is reasonable there is no way of questioning the price of anything in this country that comes from the soil. It is only in the event of his saying that it is unreasonable that the agriculturalist can question his decision. But as long as his decision is in favor of the owner and producer of the product it can not be questioned by anybody in the United States before a court or otherwise. Well, now that seems to be going a trifle too far, I must confess.

The CHAIRMAN. Going back to the milk situation, would not the municipal authorities, even if this law passed, have authority over the distribution of milk in any city?

Senator BRANDEGEE I would not say that the public powers of the State could not control, through ordinances, some of the methods to be employed.

The CHAIRMAN. Could they not pass necessary ordinances? Of course every corporation operating in the State would have to operate according to the laws of that State as to many things, but when you come to the question of price, which is the cost of living, which everybody is interested in, if the Secretary of Agriculture, who would not be the greatest judge of those questions in the world, being a mere political appointee of the President, if he says, "I do not think this price of all the cattle, of all the cotton in the United States is excessive," that is the end of it. The people have got to submit to it as long as that man is of that opinion.

Mr. TODD. And in cities like New York and Chicago, where the milk supply comes very largely from other States, this act would probably be construed from the standpoint of the price as occupying the whole field, and therefore excluding any legislation on the subject, except where the milk came from a point within the State.

Senator BRANDEGEE. Of course it distinctly provides that this shall be done in both interstate and foreign commerce, and it introduces the reasonableness of all the transportation rates in the country as being elements in the cost, which, of course, is intimately related with the reasonableness of the retail and wholesale selling prices. And all that is conferred upon a man who has just come into office, selected by the President because he was a political friend of his.

The CHAIRMAN. I suppose that so far as that is concerned it would be, like a thousand other duties, imposed on various departments. He would necessarily have to be guided by those under him to whom this kind of work would be delegated.

Senator BRANDEGEE. Of course it would take hundreds, if not thousands, of expert examiners, investigators, and lawyers, gentlemen like Mr. Todd, who has made a specialty of this thing, and the Secretary would have to be guided by the advice of his subordinates.

The CHAIRMAN. That might be true, but it is hardly reasonable, in my judgment, to suppose that that would occur. In the first place, we are assuming all the time, when you take up that view, we are assuming that these fellows who are making these organizations are trying to violate the law. We ought to guard against that; that is true. But as a matter of fact there would not be one-tenth of the organizations of this kind that would have this object in view.

Senator BRANDEGEE. I am not assuming that anybody would try to violate the law, but I am assuming that what is a reasonable price, in the tremendously complicated conditions of a country like this, is a question of getting a great variety of honest views without violating the law. I assume that the present laws are not to be repealed. Everybody wants to get as much as he can for his products, and the producer's idea of a fair price is not that of the consumer or a disinterested party, and the whole Nation would not think it fair to be put under the arbitrament of the Secretary of Agriculture.

The CHAIRMAN. You started to give us some suggestions about the law. Have you given all that you think of?

Mr. TODD. No others occur to me. The suggestion which Senator Walsh has proposed seems to me—the principle of it is certainly desirable. Whether it can be worked into the law without defeating one of the purposes which you have in mind, namely, clarification of the present law, and making it more definite, is a difficulty which, it seems to me, arises, because it still leaves it open in any particular case to determine what is a monopoly and what is an attempt to create a monopoly.

The CHAIRMAN. All right, we are very much obliged to you.

Mr. TODD. Not at all. I am sorry I have not had time to give more study to the matter.

STATEMENT OF MR. JOHN WALSH.

Senator BRANDEGEE. What is your residence, Mr. Walsh?

Mr. WALSH. I live here in Washington. Wisconsin is my legal residence.

Senator WALSH. What is your business?

Mr. WALSH. I am practicing law.

Senator WALSH. Were you at one time associated with the Federal Trade Commission?

Mr. WALSH. Yes.

Senator WALSH. During what period?

Mr. WALSH. For a period prior to April, 1919, I think something over three years, I acted as counsel for the Federal Trade Commission, and for a period of about two years as chief counsel of the commission.

Senator WALSH. And when did you quit that place?

Mr. WALSH. The 15th of April, 1919.

Senator WALSH. What was the general character of the duties that you discharged as counsel?

Mr. WALSH. The general character of the duties that I discharged was to institute proceedings charging unfair methods of competition under section 5 of the Federal Trade Commission act, which provides remedies against certain unfair methods of competition in any interstate commerce, and also the enforcement of sections 2 and 3 of the Clayton Act, which makes provision concerning corporate stockholdings and interlocking directorates, and to advising the commission in reference to investigations charging violations of these acts, and generally supervising the legal work of the legal staff of the commission.

Senator WALSH. Were you called upon at any time during your service to inquire into charges against farmers' organizations or associations?

Mr. WALSH. Yes. More times for the investigations of charges brought by farmers' organizations and associations against organizations of business which were alleged to have made unfair aggressions against farm organizations. However, I was, to some extent, connected with investigations of so-called farmers' organizations.

Senator WALSH. Let us inquire about the first class of which you spoke. What was the general nature of these charges made by the farmers of the farmers' association against the organizations, associations, or individuals charged with unfair practices toward them?

Mr. WALSH. I have in mind particularly the charges made by farmers' organizations engaged in the production and marketing of strawberries in Indiana. It was during the earlier period of my association with the commission, and the details of the facts have somewhat escaped me, but I know generally what the situation was.

Along the Illinois Central Railroad in the State of Louisiana there was a number of growers' organizations—cooperative marketing organizations—and it was charged by some of these organizations that certain buyers at St. Louis and in New Orleans would come into the field and offer prices very much higher than those the associations themselves were paying and higher than the market warranted, and they thus would demoralize the association and get the members to drop out, and they would thus demoralize the organization, and all the farmers' organizations or growers' organizations were thus demoralized. Then they would have control of the field, and could and would and did lower the prices of strawberries.

The CHAIRMAN. That was claimed as an example or an illustration of unfair competition?

Mr. WALSH. Right.

Senator WALSH. What became of that inquiry?

Mr. WALSH. That inquiry resulted in this, as I recall it. An investigation was made of the situation, and I think the facts, as I recall now, were substantially as alleged, and the parties who were alleged to have carried on these tactics promised to be good, and they were good, and the matter was dropped at that time, and the farmers claimed that they had received reparation and a correction of the evils of which they complained.

Senator WALSH. Have you in mind any others?

Mr. WALSH. I have in mind also complaints by farmers' elevator organizations somewhere in the West complaining of the campaign of libel, slander, and villification against farmers' organizations to discourage them and to have farmers generally believe that it would be unprofitable for them to join these organizations, and it would be much better if they would keep out and sell their grain to regular grain dealers.

Senator WALSH. Now, turning to the other class of complaints against the farmers' organizations.

Mr. WALSH. What I have in mind particularly is a complaint which I went into in quite an extensive manner, and that was a complaint against the Associated Raisin Co., located at Fresno, Calif. Do you want the details in reference to that?

Senator WALSH. Please tell us about the character of the organization.

Mr. WALSH. As I recall, the character of the organization was this: It was alleged—and, I think, is true—that practically all of the raisins of the United States are raised within a radius of about 45 miles of the city of Fresno, in California. The growers were owners of small tracts of land, and the market had been greatly demoralized for a period of many years. They were subject to what, it was alleged, were improper practices on the part of packers in that vicinity, who were in a position to demoralize and, they allege, did demoralize the market, so that some years the growers got less than the cost of producing. The market conditions and the position of the growers was so uncertain that they concluded it was necessary to do something. They did, as a matter of fact, attempt a number of times to form a farmers' organization, cooperative association, but without success.

Finally, a very energectic man by the name of Giffen became a grower in the district, and he had some genius for organization, and he got the farmers into an organization known as the California Association of Raisin Growers—I think that was the name of the association. At any rate this association at Fresno—my connection with it was two years ago—he organized this company at Fresno, and he got bankers and lawyers and merchants and other people, who were in business at Fresno, to get into the organization, to take stock at $100 a share, and they got a fair capital. Then, they went out and made contracts with the growers in the district to turn over their entire pack and it was an exclusive contract by which the grower agreed to turn over his entire pack to this company. The persons who put money into the organization were limited to 8 per cent return upon their investment. The grower was given a price and was given a proportionate profit on the entire business in proportion to the pack which he delivered to the company.

After some rather difficult experiences, the company began to work, began to make headway, and then a campaign was instituted to get every one in the district into this organization, and a general holiday was declared at Fresno and almost everybody in business—the stores were closed—went out to solicit the farmers to get into the organization, and to become members of this cooperative company, cooperative, of course—that is, to give the company their entire pack. The campaign was run, as I understand, a good deal like a Liberty loan campaign was run, where everybody went out and tried to induce these farmers to get into this organization. One of the complaints that was alleged was that some rather coercive measures were used; but, from my investigation of the thing, I did not think it was hardly sustained. Of course, there were rather persuasive arguments used to the farmers, and there were some boys that committed depredations that could not properly be charged to the parties who had the thing in hand and were attempting to organize it to get the contracts in.

As a matter of fact, the company got into the organization practically the entire growers of this district, and you understand, I think I made it clear, that practically all of the raisins of the United States, the raisin crops of the United States, are produced in this district. There were some packers in Fresno, and they were complainants in the proceedings, and the complaint said that they were left without business. They had heretofore been purchasing their raisins from the farmers, and since this farmers' organization was instituted they had none to cure and none to sell; that they had brands which had become valuable to them, and that they had lost in reference to it.

This farmers' organization made some money. I might say, if you are interested further in the organization, that in order to keep absolute control of the company a trust agreement was conceived by which the farmers turned their stock into a committee to vote, which committee had absolute control of the stock for a certain period of time, as I recall it. The reason of that was this: Serious complaints had been made by these independent packers, and it was claimed by Mr. Giffen, I think, that he was afraid that these packers and other packers would get control of the stock of the corporation and would direct its policy away from the original intention. So, in order to eliminate that, that scheme was devised, and, in fact, the legislature of the State of California passed a law permitting such an arrangement in such organization and association.

As I said, this company made some money and exploited the use of the raisin as a food product, went into national advertising of those raisins as a food raisin, and they got out very attractive and expensive advertisements, in such magazines as the Ladies' Home Journal, and particularly exploited a brand of raisin called the Sun-Maid, I think that is it.

Generally that was the situation. Upon investigation it was my judgment that the farmers had never made any money in the production of raisins. Perhaps occasionally when a farmer would be lucky enough he could sell his raisins at an advantageous price,

but generally they were subject to manipulation by the local buyers there, and could not come out whole; that is, they did not get what it cost to produce the raisins. So that the organization of this association, in my judgment, produced a tremendous benefit to the farmers themselves. There was no doubt that the packers who had been located there were deprived of considerable business, but upon the other hand it was shown, and surely to my satisfaction, that the price of raisins had not been raised throughout the United States through the activities or the manipulation of this cooperative association, and that it seemed to me ought to settle the question as to whether or not this organization was carried on to the injury of the public. A few dealers immediately concerned might be injured, but on the other hand a tremendous lot of farmers were benefited.

The CHAIRMAN. And the consumer was not hurt any?

Mr. WALSH. The consumer was not hurt any, and there was a greater distribution of a pure and wholesome food product.

Since I left the commission, I do not know what action the commission finally took upon the matter. There were never instituted any proceedings charging unfair practices; I presume taking advantage of the provision of the act which requires them to act only when it is in the interest of the public. Taking advantage of that provision, they failed to act.

These packers, who claimed to be injured, were apparently not satisfied with the activities of the commission in the matter, and they made an application to the Attorney General, and under the provisions of the Federal Trade Commission act, under which the Attorney General may ask the Federal Trade Commission to make an investigation of the operation of an association of individuals for the purpose of determining whether or not it is conducting its business in violation of the antitrust laws, the Attorney General asked the Federal Trade Commission to make such an investigation, and such investigation, I understand, was made. I happened to be down there one day when they were taking testimony, and I really do not know what disposition has been made of the matter. But at any rate this association has been twice I know before the Federal Trade Commission in peril of prosecution.

That generally is the situation with reference to this Raisin Cooperative Association which I was connected with.

Now, I find this in my connection with that character of organization that those who are complaining against them labor under the mistaken idea that any agricultural association or horticultural association that has capital stock and that is organized for profit is acting in violation of the Sherman antitrust law. In other words, I think this is true that it was unfortunate, so far as cooperative agricultural associations are concerned, that section 6 of the Clayton law was enacted.

The CHAIRMAN. That is what we thought, some of us, the other day.

Mr. WALSH. It says this:

> Nothing contained in the antitrust law shall be construed to forbid the existence and operation of labor, agricultural or horticultural organizations, instituted for the purposes of mutual help, and not having capital stock nor conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organization, or the members thereof, be held or construed to be illegal combinations or conspiracies in restrain in trade under the antitrust laws.

The CHAIRMAN. In other words, the ordinary person, because he reads in that law that a cooperative association of farmers, for instance, organized because the law says such cooperative organization that has not any capital stock and is not organized for profit, is not within the terms of the Sherman antitrust law, that those organized for profit do come within the provisions of the antitrust law?

Mr. WALSH. Absolutely.

The CHAIRMAN. And of course as a matter of fact we know that that does not necessarily follow.

Mr. WALSH. That does not necessarily follow, and it is not true of course, but it is a deterrent particularly in my State of Wisconsin, where there has been a great deal of public interest in the farmers' organizations.

The CHAIRMAN. Let me ask you right there, as having had some experience with this law, suppose we amend section 6, do not do anything else but amend section 6 of the present antitrust law and leave out those words, "Not organized for profit, or not having capital stock." Would not that meet the situation then? Would that make legitimate every organization or cooperation of farmers that ought to be made legitimate?

Mr. WALSH. You mean strike it out?

The CHAIRMAN. Yes.

Mr. WALSH. It would not change the situation as I take it.

The CHAIRMAN. I do not mean strike out all there is in there, but I mean strike out the limiting language which says, "without capital stock and not organized for profit." Leave the limitation in there but strike out that limiting language.

Mr. WALSH. Then it would be, "nothing contained in the antitrust law shall be construed to forbid * * * organizations, instituted for the purpose of mutual help."

The CHAIRMAN. Yes.

Mr. WALSH (reading). "Or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof."

I should say that that would meet the situation.

The CHAIRMAN. Would it go too far, would it let in anything that ought to be kept out?

Mr. WALSH. I think not. I should say not because if it did go so far that it as a matter of fact fixed prices, divided territory, limited output or did any of the other things which are generally regarded as restraint of trade, such an organization would as a matter of fact be subject to condemnation by the Sherman antitrust law.

Senator WALSH. But would not the construction then to be given to that act forbid that?

Mr. WALSH. You are referring to section 6?

Senator WALSH. Yes. If you strike out the limiting words there and make farmers' associations organized for mutual improvement entirely exempt from the Sherman Act, then would not a farmers' organization, no matter how monopolistic it might become, be exempt from prosecution?

Mr. WALSH. There ought to be, of course, some qualification or some restrictions, it seems to me, so far as it relates to an enhancement of price and the elimination of competition. I would say there should be some qualifications to it. This bill under consideration—I have only made a cursory examination of it.

Senator WALSH. If we did not have some legislation such as that which this bill contemplates, but we simply amend section 6 by striking out the limitations, then your raisin company would be at liberty to charge any price it saw fit?

Mr. WALSH. Absolutely, that is true; and there ought to be some qualifications to it.

The CHAIRMAN. What were you going to say about this bill?

Mr. WALSH. I say I never saw it or heard of it until yesterday, and only had a chance to hurriedly read it, so that I have not made an analysis of the bill. I am not interested in the bill and appear here simply upon invitation to give my views as a result of my examination.

The CHAIRMAN. What do you think of the bill from the examination you have made of it?

Mr. WALSH. I am in great sympathy with the object and purposes of the bill generally, for this reason, that the antitrust laws I do not believe were intended to correct what appear to be the evils on the part of farmers' organizations, but were for similar groups engaged in trade. There is not much danger from violation of antitrust laws by farmers who are scattered, widely scattered, and who can not concentrate the products of their industry as any other material which passes through trade, like coal.

The CHAIRMAN. That brings up a point that is in this bill. This bill names farmers and dairymen. To the general farmers it seems to me that there is no danger in throwing the bars down, because they are scattered all over the United States, and they can not, at least they have never succeeded in organizing them to restrain trade and fix prices, and I do not think we ought to bother ourselves about that. But when it comes to the dairymen's association, it is a little different. That is more local in its application. They might do that thing surrounding a city.

Mr. WALSH. Well, in the State of Wisconsin the dairymen—that is, the butter and cheese industries—are very highly organized, but still they are subject to intense competition. They can not get enough farmers organized together so as to create a monopoly of the products.

Senator WALSH. That is probably the case with butter and cheese, because those products might stand shipment for long distances. But let us take the case of milk; that will not stand shipment.

Mr. WALSH. Probably not. It depends upon what the local conditions are—that is, the market to be supplied and the territory to draw from.

Senator WALSH. In view of that situation——

Mr. LYMAN. Pardon me, may I answer there? I would like to say in times when there have been differences between milk producers in the New York district and the distributors, the distributors have brought in milk as far as from Chicago—over a thousand miles—and brought it into the city, and have even gone clear up into Canada.

Senator WALSH. That emphasizes the fact that under ordinary circumstances you can not do it.

Mr. LYMAN. But the point was that they have done it and can do it. They have picked up train loads from Chicago, from the Chicago district, and shipped it into New York.

Senator WALSH. What would you say to an amendment to this act such as was suggested by me to Mr. Todd? [Reading:]

> Nothing herein contained shall be deemed to extend the scope of the act of Congress entitled—

Meaning the antitrust act—

> nor to authorize the acquisition of a rival business or to legalize the attempt to create a monopoly.

Mr. WALSH. I should think that would be a very salutary safeguard.

Senator WALSH. Is there anything in that which would really militate against the real purpose of this bill?

Mr. WALSH. No; I understand the purpose of this bill is to encourage the organization of farmers' cooperative associations for the purpose of increasing production, which is most necessary at the present time, and to remove the fear or the burden on the part of those who go into it that they may be in violation of the Sherman antitrust law.

Senator WALSH. That is all.

The CHAIRMAN. Very much obliged to you. Is there anybody else who wants to be heard?

Mr. LYMAN. Mr. Berry is here from Virginia. He is a member of the milk producers' association which brings in milk to the city. It would be a good opportunity, I think, for you to be able to ask him about how that association operates.

The CHAIRMAN. All right, Mr. Berry.

STATEMENT OF MR. DALLAS BERRY.

The CHAIRMAN. Tell the stenographer where you live and what your business is.

Mr. BERRY. I live at McLean, Fairfax County, Va., and I am a dairyman.

The CHAIRMAN. Are you a member of the dairymen's association?

Mr. BERRY. I am a member of the Maryland and Virginia Milk Producers' Association.

The CHAIRMAN. What city or cities does your association supply?

Mr. BERRY. Why, pretty nearly all of that milk comes to Washington City.

The CHAIRMAN. Any other city?

Mr. BERRY. So far as I know there is none of it being shipped to other cities. There may be just a few men who are far away who are shipping to creameries or to Richmond.

The CHAIRMAN. About how many members do you have in your association?

Mr. BERRY. I think there are about 800 members.

The CHAIRMAN. And that comprises the dairymen, those that produce milk and live within a radius of how far from the city of Washington?

Mr. BERRY. I should say 250 or 300 miles. I think Timberville, Va., is about as far away as any of them. I do not know just how far——

The CHAIRMAN. What proportion of the milk that comes into Washington does your association supply?

Mr. BERRY. Why we estimate that it supplies about 75 per cent.

The CHAIRMAN. Does the other 25 per cent come from independent producers or from some other associations?

Mr. BERRY. Independent producers.

The CHAIRMAN. Do they ship to the same people to whom your association ships?

Mr. BERRY. In many instances; yes.

The CHAIRMAN. Does your association have to do with the distribution of the milk after it gets here?

Mr. BERRY. Absolutely not.

The CHAIRMAN. You sell to the distributing companies?

Mr. BERRY. Yes, sir.

The CHAIRMAN. Is there one such company or more than one?

Mr. BERRY. A number of such companies.

The CHAIRMAN. Do you sell to several of them?

Mr. BERRY. Why, our members sell to several of them.

The CHAIRMAN. Do you sell as individuals or through the association.

Mr. BERRY. We sell now as individuals.

The CHAIRMAN. Then this association of which you are a member does not market the products of its members?

Mr. BERRY. No, sir.

The CHAIRMAN. What is the object of the association?

Mr. BERRY. Well, cooperation in marketing our milk supply.

The CHAIRMAN. How do you cooperate if you do not cooperate in marketing?

Mr. BERRY. Well, we proceed along this line: We have an executive committee and the custom in Washington for 20 years, as long as I have been producing milk, has been to have two prices. One we call the winter price, which lasts for seven months, and one a summer price, which lasts for five months. The winter price begins October 1 and the summer price begins May 1. Just prior to the time for the change of these prices, each member of our executive committee is requested to figure on the cost of milk production, based upon the then existing prices of labor and feed. We have a meeting and compare those prices, and as nearly as possible we strike an average and that we suggest to our members as a fair price for milk. We have made no attempt to compel them to stand by that price. As a matter of fact they all try to get that price.

The CHAIRMAN. How nearly do they succeed?

Mr. BERRY. Until a surplus of milk comes on the market, and some of the dealers decide that they will not pay the price, then a few dealers, as you know, have succeeded in getting milk below the price that we recommend. Last winter some three or four dealers did that, and I am satisfied that many of the men who sold the milk to them sold it below the cost of production.

The CHAIRMAN. Now, does your executive committee, representing your association, tell the membership to whom they shall ship their product?

Mr. BERRY. No, sir.

The CHAIRMAN. They have nothing to do with that?

Mr. BERRY. They have nothing to do with that.

The CHAIRMAN. They do not go any further than to let you know what, in their judgment, would be a fair price?

Mr. BERRY. That is as far as we have gone; yes, sir.

The CHAIRMAN. How many distributing agencies are there in Washington?

Mr. BERRY. Why, I can not state the exact number. I should say 8 or 10.

The CHAIRMAN. Are they competing with each other briskly for your products? Are you solicited by the various distributing agencies to ship to them?

Mr. BERRY. At certain seasons of the year, when there is a shortage, especially.

The CHAIRMAN. Has there ever been to your knowledge any combination—among the distributors, I mean?

Mr. BERRY. Why, they tell us that there is none; that they are prohibited under the law from making any agreement as to prices; but they do generally.

Senator WALSH. Well, now, Mr. Berry, you gentlemen who produce have your executive committee?

Mr. BERRY. Yes, sir.

Senator WALSH. And through those you confer to consider what price you want to get——

Mr. BERRY. We merely suggest.

Senator WALSH. You want to get for your milk, and you suggest to every one of your members that that is the price you want to ask for your milk. Why should you complain——

Mr. BERRY. I am not complaining.

Senator WALSH. If the distributors get together and have an executive committee, also, which suggests to their members the price they ought to pay?

Mr. BERRY. I merely started to say that they tell us that that is a violation of the law—those to whom I have talked—that the Sherman law will not allow them to get together.

Senator WALSH. Do you not feel that you are in just exactly as great peril as they are? There certainly would not be one law for you and another law for them.

Mr. BERRY. I am not a lawyer, sir, and I am not able to say. We feel that we certainly have the right to figure on the cost of production and tell our members what we regard that cost to be, and what reasonable price added to that would put the price of milk at.

Senator WALSH. Let me inquire of you, would you like to have us pass a law which would give the distributors exactly the same right—assume that you have that right—would you like to have us pass a law to give them exactly the same right to meet together and consider the situation and recommend to their members what they ought to pay to you?

Mr. BERRY. Provided you give us the right to get together and see whether or not we shall take that price.

Senator WALSH. Surely, if we make a law authorizing them to get together and determine what price they are willing to give you we

certainly ought to give you the right to get together and determine whether you should take that.

Mr. BERRY. Undoubtedly; I should suppose so.

Senator WALSH. Suppose neither of you has the right now to do either of these things, and we pass a law which permits you to get together to determine what price you want to get, and to recommend to your members that they should not sell for less than that, but at the same time we leave the law as it is with respect to the distributors, and make it a crime for them to get together and determine how much they will pay.

Mr. BERRY. You will readily understand, Senator, that it is very much easier for 10 distributors in the city of Washington to see one another almost every day and arrive at some agreement about what they will pay us. Very much easier, I say, than it is for 800 farmers scattered through Maryland and Virginia to get together and arrive at any agreement.

Senator WALSH. You are quite right, Mr. Berry.

Mr. BERRY. As I stated awhile ago, they tell me—whether it is true or not—that it is a violation of the law for them to get together and agree on a price, either what they shall pay or what they shall ask; but we can readily see that that can be arranged with them without having any geenral meeting called.

Senator WALSH. A kind of a Gary dinner?

Mr. BERRY. Yes, sir. Now, my experience has been this, as a member of the executive committee I have occasion frequently to talk with the dealers in the city, and they always prefer to make their bargains individually with the producers rather than have anything to do with the association. Now, they seem to think that they can take individual farmers and persuade them to take a very much lower price than they can get those farmers to sell for if we get together and figure on the cost of production and give our men some information. As a matter of fact, the average farmer of the States of Maryland and Virginia does not know what it is costing him to produce anything, whether milk or strawberries or wheat or anything else. They have just simply been in the habit of farming all their lives; and until recently they could not do much else, and they have just gone on and taken what they could get. As a result, to-day the last report of the Secretary of Agriculture tells us that the wheat crop of 1920 is going to be 33.8 short of normal. Now, one reason for that is that these men feel that they are not making anything, and they are not putting forth the same effort that they did during he war, when the great cry was for wheat to feed our country and to win the war. They were willing then to work 18 hours a day, or a day and a half in 24 hours, from a patriotic point of view. But now they are becoming discouraged. They see that the man who ordinarily worked on their farm as a laborer is getting out and getting anywhere from $5 to $8 a day when he has hardly intelligence enough to use a saw and hatchet, and they are working on the farm and not making anything. So that the tendency shows what is going to happen unless something is done to relieve the farm and keep up production.

The CHAIRMAN. I want to ask you about the cost of production and the cost of distribution of milk. You know I suppose about

what it costs the members of your association to produce milk. Tell us how much.

Mr. BERRY. Why for last winter we had our members meet and figure on the cost of milk production. There were some, I should say, some 12 or 15 of us that did that figuring, and those prices ranged, as I recall, all the way from 44 to 48 cents a gallon.

Mr. LYMAN. Did that figure in the going prices for the products that you get in the towns?

Mr. BERRY. Market prices as they were then quoted to us. Then we struck an average, Senator, and added 10 per cent profit to that. That gave us as I recall 46 cents a gallon; that is, for 3½ per cent milk.

The CHAIRMAN. You had from 44 cents to 48 cents?

Mr. BERRY. The price ranged all the way from that.

The CHAIRMAN. Then the average was 46 cents a gallon.

Mr. BERRY. As I recall our average price, plus 10 per cent profit came to about 46 cents a gallon.

The CHAIRMAN. That was about 11½ cents a quart. Now, what did you get for it?

Mr. BERRY. In view of the great cry for reducing the cost of living we recommended that our members take 44 cents a gallon for the milk.

The CHAIRMAN. That was a loss of 2 cents.

Mr. BERRY. Yes.

The CHAIRMAN. Now, what did the consumer have to pay? Do you know that?

Mr. BERRY. The consumer paid 17 cents or 18 cents.

Mr. LYMAN. We paid 18 cents all winter. I think 20 part of the time out at Mount Pleasant.

The CHAIRMAN. I know what it cost myself. I want to get it in the record.

Mr. BERRY. I believe last winter's price was 18 cents.

The CHAIRMAN. Then the distributor pays 11½ cents.

Mr. BERRY. And sold it for 18 cents.

Mr. LYMAN. The distributor paid 11 cents.

The CHAIRMAN. He pays 11½ cents. You sold it at 46 cents?

Mr. BERRY. No, sir; we sold it at 44 cents. We recommended that loss in order to help meet the cry against the high cost of living. We sold it for 11 cents and they got 18 cents.

The CHAIRMAN. Has your association ever taken up the question of the distribution of milk? Do you think that you can distribute it?

Mr. BERRY. We feel confident that we can. We have discussed that question of forming a cooperative association and distributing our milk. Plans were talked over seriously and at great length trying to get municipal plants to distribute the milk.

The CHAIRMAN. I wish you had taken that up with me. I had that in my mind for several years.

Mr. BERRY. We could not get anything done on that, and we talked about forming ourselves into a cooperative company and distributing the milk, but Mr. J. J. Darlington, of Herndon, a very prominent lawyer here, tells us that we would be violating the law if we did that.

Senator WALSH. That you would be violating the law?

Mr. BERRY. Yes; if we undertook to distribute and to market what our members produced, that would be forming a monopoly so far as the milk produced for this market was concerned, so we had to give up that idea.

The CHAIRMAN. Do you think that this law as it is before you would give you the right?

Mr. BERRY. We would like to have it.

Senator WALSH. You would try to organize a distributing agency?

Mr. BERRY. That is what we hope to do. I am talking as an individual. We have discussed this matter in our committee.

Senator WALSH. Was Mr. Darlington employed by you to give you counsel about that?

Mr. BERRY. No, sir. One of our members talked to Mr. Darlington.

Senator WALSH. Did you ever talk with any lawyer on the subject?

Mr. BERRY. No, sir.

The CHAIRMAN. I suppose you must have taken council with Mr. Darlington.

Mr. BERRY. One of our members talked to Mr. Darlington and we had him present at a meeting.

The CHAIRMAN. Had Mr. Darlington?

Mr. BERRY. Had this member; and he told us what Mr. Darlington told him. He discouraged the idea. He got up and made a speech and tried to discourage the idea of cooperative handling of milk.

Senator WALSH. That is to say this man told you that Darlington had told him thus and so?

Mr. BERRY. Yes, sir. We have never as yet been able to get Mr. Darlington to join our association. He was a milk producer at Herndon.

Santor WALSH. He would not come in?

Mr. BERRY. He would not come in for fear of violating the law, as I understood it. We feel that we can sell that milk to the consumer for less money, and we can pay our producers more money if you should cut out the middlemen.

The CHAIRMAN. I should think you could. Now, there is a great loss in the distribution of milk in this city, and I suppose that is true in every city.

Mr. BERRY. We get 11 cents for producing it, furnishing all the capital invested—the farm, the cows, feed, and the labor—and the distributor for the pasteurizing, bottling, and delivering gets 7 cents. There is a whole lot of lost motion in there somewhere.

The CHAIRMAN. Did your association ever have anyone consult with the Department of Justice about whether you were violating the Sherman antitrust law, your association?

Mr. BERRY. I do not recall that we ever did.

The CHAIRMAN. Do you remember a meeting of your association—it might have been of your committee, I think of your association—where there had been a committee appointed at some prior meeting to meet and report, in which they went into an exhaustive investigation of the production and the cost of milk, and reported that you were not getting the cost out of it and recommended in that report that the farmers who were producing milk should gradually get into other lines of agriculture that would pay them better?

Mr. BERRY. No, sir.

The CHAIRMAN. Is there another milk association over in Maryland?

Mr. BERRY. Yes, sir; the Maryland State Dairymen's Association is a separate association.

The CHAIRMAN. Is there an association in the vicinity of Washington that is supplying Washington with milk?

Mr. BERRY. They all belong to this association—the Maryland and Virginia Milk Producers' Association. The members of the Maryland State Dairymen's Association market pretty nearly all of their milk in Baltimore City.

The CHAIRMAN. I had reference to the association of milk producers who sell their product in the city here.

Mr. BERRY. I do not recall that our association has ever recommended that.

The CHAIRMAN. I do not mean your association, but this committee that had been appointed by the association to investigate the cost of production in the vicinity of Washington made a report to the association in which they stated that they were selling at a loss, and recommended to the farmers and members of the association that they could make more money if they employed their energies in other agricultural directions than the production of milk.

Mr. BERRY. There may have been such a report made some four or five years ago.

The CHAIRMAN. No; the one I had reference to was made not very long ago, and the Department of Justice was contemplating having this committee arrested.

Mr. BERRY. No, sir; I do not know anything about that. Our committee had a number of times come to the conclusion that something like one-half of our members are making milk at a loss, but we never have recommended that they go into some other business, so far as I know.

The CHAIRMAN. I was told by a producer of milk whose product was sold in the city of Washington that he was a member of such a committee over in Maryland, about 20 miles out, and that they made an investigation, they made a report, and made that kind of a recommendation, and the other members of the committee were frightened, afraid they were going to be arrested, and that he went down to the Department of Justice and told them what he had done, and said, "If you want to arrest anybody, take me, and we will see whether this is a violation of the law"; but that the other members were frightened, and there was some concern for fear they might be arrested, even though they felt they had not done anything that they thought was illegal.

Mr. BERRY. I do not recall anything of the kind. Now, recently the State of Maryland has made a milk survey, figuring on the cost of milk production, and, according to their survey, we are all selling milk way below the cost of production. They sent men out on the farms and kept them right there to keep track of all feed, labor, and everything that went into the cost of that milk.

The CHAIRMAN. Mr. Berry, I would like to ask you as a practical man, if these 700 or 800 farmers are producing milk at a loss, is the natural result going to be, whether you have an association or not, that they are going to get out of business?

Mr. BERRY. Most assuredly. The only thing that is holding them in is the desire to keep live stock on the farm, and those men who are doing that keep, as a rule, a poor grade of cows, and just as long as cows of poor grade are kept on dairy farms, the cost of milk is going to be higher than if they kept high-class stock, because everybody knows that you can produce milk more economically with a good cow than a poor cow. Just as long as we have to take a price that is below the cost of production, or just a little bit above the cost of production, it is going to have a tendency to discourage production.

Mr. LYMAN. Here is a clipping from the Washington Times.

The CHAIRMAN. This is a dispatch from Indianapolis and reads as follows [reading]:

INDIANAPOLIS, IND., *May 26.*

Declaring that certain sections of the Lever Act are class legislation, in that they permit farmers and food dealers to hoard food and charge excessive prices while denying the same privilege as regards coal to miners and operators, Judge A. B. Anderson, in United States district court here to-day, sustained the motion to quash the indictments recently returned against 125 coal operators and miners on 13 of the 18 counts, and overruled the motion on the other 5.

TWO SECTIONS HELD VOID.

Judge Anderson, in delivering his opinion, declared that amended section 4 of the Lever Act is void and that the original section 4 is insufficient. He also declared that section 26 of the Lever Act is void.

Mr. LYMAN. If that decision had been made prior to the action that you refer to taken by some association of milk producers, it would not have even been a violation of the law under the Lever Act.

The CHAIRMAN. From the statement made to me, he did not think that he had violated any law. The man who did it did not think that he done so, but the point in it was that they were frightened, and even if they were confident that they had not violated the law; they did not like the idea of being arrested and tried even though they knew they were going to be acquitted.

Mr. LYMAN. What will be the effect of that decision now on the farm associations throughout the country?

The CHAIRMAN. I do not know.

Mr. LYMAN. That decision of Judge Anderson's.

Senator WALSH. I do not see how it affects this situation at all. The law is held unconstitutional, so it is not in effect as to farmers at all.

The CHAIRMAN. I would like to have a copy of the law before me before expressing an opinion.

Mr. LYMAN. Is that overthrowing any law?

Senator WALSH. Yes.

Mr. LYMAN. I think it referred to one of our sections?

Senator WALSH. That is the hoarding section.

The CHAIRMAN. We amended one of them, you know, since the armistice. I suppose that is what it refers to. I suppose that is section 4, but I would not know unless I had the law before me.

Mr. S. F. BOWER, of the Farmers' Union. May I ask Mr. Berry a question?

The CHAIRMAN. Certainly.

Mr. BOWER. Mr. Berry, you stated before you had an association you had two prices for milk, one a winter price and one a summer price.

The CHAIRMAN. You have that yet?

Mr. BERRY. Yes, sir.

Mr. BOWER. Who fixed that price? How was that price arrived at before your association was formed?

Mr. BERRY. The dealers fixed it. We had to take what they offered.

Mr. BOWER. They offered you contracts at a fixed price?

Mr. BERRY. No; they just told us what they would pay us.

Mr. BOWER. Did you find that the various dealers offered you the same price?

Mr. GERRY. Generally so, except when one wanted to get milk away from the other, and he would pay more until he got the milk, and then cut down again.

Mr. BOWER. There was some method by which the dealers arrived at a price that you should get for your summer milk and a price for your winter milk.

Mr. BERRY. I should say so.

Mr. BOWER. It is your idea that the producer of milk ought to have something to say about the price he gets for it and not the distributor?

Mr. BERRY. Most assuredly.

The CHAIRMAN. I think that is all.

Thereupon at 5 o'clock p. m. the subcommittee adjourned, subject to the call of the chairman.

MSH # 2194

END OF
TITLE